

## AMS/FAST CHANGE REQUEST (CR) COVERSHEET

**Change Request Number:** 19-03

**Date Received:** October 3, 2018

**Title:** Personnel Security Changes - Policy

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**Initiator Organization Name / Routing Code:** Procurement Policy Branch, AAP-110

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**Policy and Guidance:** (check all that apply)

- ☒ Policy
- ☐ Procurement Guidance
- ☐ Real Estate Guidance
- ☐ Other Guidance
- ☐ Non-AMS Changes

**Summary of Change:**

Administrative updates including updates to Personnel Security organizational designations, and updates reflecting current personnel security practices.

**Reason for Change:**

Updates reflecting current Personnel Security organization and practices.

**Development, Review, and Concurrence:** Personnel Security (AXP), Acquisition Policy, Contracts, and Procurement Legal

**Target Audience:** Contracting and program office personnel

**Briefing Planned:** No.

**ASAG Responsibilities:** Electronic review and approval 12/6/18.

**Section / Text Location:** 3.1.8, 3.14.5, 4.2.3.3.2.4, and 4.11

**The redline version must be a comparison with the current published FAST version.**

- ☒ I confirm I used the latest published version to create this change / redline

**or**

☐ This is new content

**Links:**

[https://fast.faa.gov/docs/acquisitionManagementPolicy/acquisitionManagementPolicy\\_3.pdf](https://fast.faa.gov/docs/acquisitionManagementPolicy/acquisitionManagementPolicy_3.pdf)

[https://fast.faa.gov/docs/acquisitionManagementPolicy/AcquisitionManagementPolicy\\_4.pdf](https://fast.faa.gov/docs/acquisitionManagementPolicy/AcquisitionManagementPolicy_4.pdf)

**Attachments:** Redline and final documents.

**Other Files:** N/A

Redline(s):

**Section Revised:**

**3.1.8 Procurement Integrity Act**  
**3.14.5 Facility Security Program**

**Acquisition Management Policy - (~~10/2018~~ 1/2019)**

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## **3 Procurement Policy**

### **3.1 Overview**

#### **3.1.1 Introduction Revised 7/2007**

The goal of the Federal Aviation Administration procurement system is to obtain high quality products, services, and real property in a timely, cost-effective manner, at prices that are fair and reasonable. The procurement system enables the FAA to be innovative and creative so that the right vendor is selected to implement a solution. The FAA procurement system is an integrated part of the lifecycle management process. The FAA procurement system focuses primarily on identifying sources, awarding, and administering contracts.

The FAA procurement system emphasizes competition, selects the vendor with the best value and provides a protest forum through the FAA's Dispute Resolution system. Open communications with industry from initial planning to contract award are the cornerstones of the process. Procurement documents are tailored to individual requirements and screening improves source selection by focusing efforts on those offerors most likely to receive an award. The procurement system emphasizes "common sense" decision-making, flexibility, business judgment, and a team concept for managing procurements. Service organizations have the proper level of authority to make decisions and are responsible and accountable for their actions.

The FAA's procurement system provides policy and guidance for executing contracts and agreements to acquire products, services, and real property. In support of the FAA's mission, the Administrator, or designee, has broad discretion to select contractors who provide products, services, and real property. Procurement officials should follow the policy and guidance contained herein but, based on prudent discretion and sound judgment, may employ any procedures that do not violate applicable statutes or regulations. The National Acquisition Evaluation Program strategically monitors the implementation of procurement requirements by periodically evaluating acquisition processes in support of FAA efforts to improve the quality of procurement practices.

#### **3.1.2 Applicability**

The FAA procurement system applies to all procurements conducted by the FAA, as set forth herein with the exception of assistance relationships, such as grants and cooperative agreements.

#### **3.1.3 Fundamental Principles Revised 7/2013**

The FAA procurement system will:

- ☐ Enable the selection of the contractor with the best value to satisfy the FAA's mission;
- ☐ Focus on key discriminators between vendors and their products or services to ensure timely, cost efficient, and quality contract performance;
- ☐ Promote discretion, sound business judgment, and flexibility at the lowest levels while

- maintaining fairness and integrity;
- ☐ Encourage the procurement of commercial and non-developmental items;
- ☐ Provide streamlined methods and initiate innovative processes to conduct timely and cost-effective procurements;
- ☐ Promote open communication and access to information throughout the procurement process and encourage use of electronic methods for information exchange;
- ☐ Encourage competition as the preferred method of contracting;
- ☐ Permit single-source contracting when necessary to fulfill the FAA's mission;
- ☐ Allow the use of a range of contract types and transactions best suited to a particular procurement;
- ☐ Authorize the use of purchase cards consistent with prudent business practice;
- ☐ Provide attainable and reasonable opportunities for small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals in consultation with the Department of Justice to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand Constructors v. Peña*, as well as the President's July 19, 1995, directive to the heads of executive departments and agencies on the "Evaluation of Affirmative Action Programs;"
- ☐ Provide an internal process for resolving protests and disputes in a timely, cost-effective and flexible manner;
- ☐ Promote high standards of conduct and professional ethics;
- ☐ Require appropriate file documentation to support business decisions;
- ☐ Assure adequate checks and balances; and
- ☐ Ensure public trust.

### **3.1.4 Contracting Authority Revised 10/2014**

Pursuant to the Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264, the Administrator is the final authority for carrying out all functions, powers, and duties of the Administration relating to the acquisition and maintenance of property and equipment of the Administration. The Administrator has broad authority "to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the Administration . . . with any Federal agency, or any instrumentality of the United States, any territory, or possession, or political subdivision thereof, any other governmental entity, or any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate."

The FAA Administrator may establish contracting activities and delegate to the Acquisition Executive broad authority to manage FAA's contracting functions. The Acquisition Executive is authorized to appoint Chief(s) of the Contracting Office (COCO) and redelegate the contracting authority to the COCO. The COCO may request that the Acquisition Executive further redelegate contracting authority to individuals within the COCO's management or service area such as procurement and real property contracting officers, logistics management specialists, and managers of the purchase card program.

All individuals who are delegated contracting authority must have met the training requirements of the

AMS and have demonstrated the appropriate knowledge and experience needed to execute this authority on behalf of the Government. Except for the purchase card program manager, these individuals may not redelegate their contracting authority. Contracting authority must be delegated to Contracting Officers or other qualified persons with a written warrant or other certificate of appointment. Contracts, agreements, grants and other transactions may be entered into and signed on behalf of the FAA by Contracting Officers only, or other qualified persons with a written certificate of appointment. The certificate of appointment must expressly state the types of transactions and limitations authorized by the delegation. Absent specific authority in the delegation, that authority does not exist. Information on the limits of the contracting officer's authority must be readily available to the public and FAA personnel.

The Contracting Officer must have warrant authority commensurate with the total estimated potential value (see Appendix C) of a transaction. Modifications after the original award are considered standalone actions when calculating the total estimated potential value; a Contracting Officer's warrant must have a dollar limitation sufficient to award the total value of a modification, but not the entire value of the contract, order, lease, or agreement.

Key contracting duties and responsibilities are to be separated among individual people. For a particular requirement, the same person must not requisition, certify funds availability, approve, and obligate funds.

### **3.1.5 Conflict of Interest Revised 10/2008**

Any member of a service organization or Office of Dispute Resolution for Acquisition (ODRA) who is a Federal employee that has a real or apparent conflict of interest must withdraw from participation in the procurement process when required by law (18 U.S.C. 208) or regulation (5 CFR Part 2635). To sustain the integrity of the procurement process, non- Federal members of a service organization or ODRA are held to the same standards.

### **3.1.6 Disclosure of Information Revised 10/2008**

Source selection information and proceedings must not be discussed outside the service organization. The Source Selection Official (SSO) must determine the extent to which source selection information is disclosed and must execute a certificate of nondisclosure as appropriate.

### **3.1.7 Organizational Conflicts of Interest**

The policy of the FAA is to avoid awarding contracts to contractors who have unacceptable organizational conflicts of interest. The FAA will resolve organizational conflict of interest issues on a case-by-case basis; and when necessary to further the interests of the agency, will waive or mitigate the conflict at its discretion.

### **3.1.8 Procurement Integrity Act Revised 10/2018 1/2019**

FAA is subject, with modifications as described in the ~~Procurement Toolbox~~AMS Guidance with FAA-specific language, to the Procurement Integrity Act (41 U.S.C. §§ 2101-2107).

### **3.1.9 Electronic Commerce in Contracting Revised 7/2018**

The FAA may use electronic commerce, including electronic signatures, to conduct and administer procurement actions. The Electronic Signatures in Global and National Commerce Act (E-SIGN) provides equivalency between legally-required written records and the same information in electronic form.

Unless waived by the Chief of the Contracting Office, the FAA's official contract file for contract actions on or after October 1, 2013 must be created in electronic format, and stored and maintained in the "Electronic Document Storage (eDocS) system," the single repository for paperless contract files. Purchase card transactions, awards made by Real Estate Contracting Officers, awards made by personnel with Delegations of Procurement Authority and files that are required to be created or maintained in paper format such as documents associated with certain real estate transactions and documents requiring a raised seal signifying authenticity are excluded from this requirement.

Based on the National Institute of Standards and Technology (NIST) Policy Statement on Hash Functions dated August 5, 2015, the FAA must stop using Secure Hash Algorithm 1 (SHA-1) for generating digital signatures, generating time stamps and for other applications that require collision resistance. Further guidance on the use of SHA-1 is in NIST Special Publication (SP) 800-131A, Revision 1, dated November 6, 2015.

FAA must use SHA-256 or higher for the generation of digital signatures, generating time stamps, and other applications that require collision resistance. NIST provides further guidance on the use of SHA-256 in NIST SP 800-57 Part 1, section 5.6.2 as amended and SP 800-131A, Revision 1. Additional guidance on the use of SHA-3 is in NIST SP 800-185 as amended.

FAA may still use SHA-1 for the following applications: Verifying old digital signatures and time stamps, generating and verifying hash-based message authentication codes (HMACs), key derivation functions (KDFs), and random bit/number generation.

## **3.2 Contracting**

### **3.2.1 Procurement Planning**

#### **3.2.1.1 Applicability Revised 4/2013**

Written procurement plans are required for all FAA procurements except: real property, utilities, purchase card transactions and transactions less than \$25,000. The specific content of a procurement

plan may vary depending on the complexity of the procurement. The procurement planning templates in AMS must be used. Template A must be used for all simplified and commercial procurements and Template B must be used for all complex and non-commercial procurements.

### **3.2.1.2 Policy Revised 11/2009**

Procurement planning is an indispensable component of the total acquisition process. Service organizations are expected to use procurement planning as an opportunity to evaluate/review the entire procurement process, so that sound judgments and decision-making will facilitate the success of the overall program. For procurements not covered by an implementation strategy and planning document, procurement planning should be appropriate and proportionate to the complexity and dollar value of the requirement.

#### **3.2.1.2.1 Market Analysis Revised 4/2013**

The purpose of market analysis is to initiate industry involvement, develop and refine the procurement strategy, obtain price information, determine whether commercial items exist, determine the level of competition, identify market practices, or obtain comments on requirements. The magnitude and degree of formality of the market analysis should be proportionate to the contemplated procurement. The market analysis may be as simple as a telephone call or as formal as a market survey advertisement to learn of industry capabilities. All market analyses, formal or informal, should be appropriately documented.

#### **3.2.1.2.2 Procurement Plan Revised 4/2013**

A plan for each contemplated procurement or class of procurements should address the significant considerations of the procurement action. A procurement plan may cover more than one contract. The procurement plan represents the service organization agreement for conducting the procurement. See paragraph 3.2.1.1 for documentation requirements.

#### **3.2.1.2.3 Consideration of Agency Wide Contracts Revised 1/2014**

Agency Wide Contracts must be used to the maximum extent possible. The procurement plan must document which agency wide contracts were considered. If an applicable agency wide contract is available for utilization and is not utilized; the procurement plan must include the rationale for not utilizing the existing agency wide contract.

#### **3.2.1.2.4 Independent Government Cost Estimate Revised 1/2017**

An independent Government cost estimate (IGCE) is required for any anticipated procurement action (to include modifications) whose total estimated value is \$150,000 or more, except for:

- ☐ Modifications exercising priced options or providing incremental funding;
- ☐ Delivery orders for priced services or supplies under an indefinite-delivery contract;
- ☐ Acquisition of real property (i.e., land or space); or
- ☐ Supplies or services with prices set by law or regulation.

The Contracting Officer (CO) may require an IGCE for procurement actions (to include modifications) anticipated to be less than \$150,000.

### **3.2.1.3 Guidance and Principles Revised 11/2009**

For procurements not covered in a program with an implementation strategy and planning document, the following elements should be considered in planning for procurements.

#### **3.2.1.3.1 Development**

Preference should be given to using commercial and previously developed items whenever possible. Development of a product, and its associated costs and risks, should be avoided unless necessary to meet FAA needs. If developmental items are required, the need should be documented in the procurement plan.

#### **3.2.1.3.2 Scope of Procurement**

The scope of a procurement in terms of complexity, period of performance, dollar value, risk, and other factors should be considered in planning a procurement. As the scope of a procurement increases, the risk of unsuccessful management of the procurement also increases. Appropriate trade-offs should consider elements such as: managing a large complex procurement versus several smaller phased procurements; the systems integration role; total systems responsibility; timing of benefits; technological obsolescence; and other factors.

#### **3.2.1.3.3 Budget Allocation Release**

Consideration should be given to releasing contract-related budget information to industry in situations where the procurement involves development or multiple-year funding and is likely to be conducted competitively. If the service organization decides to release the information, the decision should be identified in the procurement plan.

#### **3.2.1.3.4 Quality Assurance**

For complex systems or hardware acquisition, the service organization should coordinate with representatives of the Quality Assurance office as soon as procurement requirements are defined, to

establish quality assurance requirements for the proposed procurement.

#### **3.2.1.3.5 Labor Relations**

When planning procurements, the service organization should comply with applicable FAA labor relations directives.

#### **3.2.1.3.6 Maintaining Competition**

Consideration should be given to methods of maintaining competition throughout the lifecycle of any product or service. Methods to be considered may include dual sourcing, obtaining reprourement data and data rights, open system designs, and any other appropriate methods.

#### **3.2.1.3.7 Single-Source Approval Revised 11/2009**

The service organization determines whether the procurement should be conducted on a competitive or single source basis. The rationale for the single source procurement should be included in the implementation strategy and planning document or the procurement plan. If an implementation strategy and planning document is not required and the service organization determines that based on the complexity of the procurement a procurement plan will be established, the procurement plan should include the justification for the single-source decision. Approval of the implementation strategy and planning document or the procurement plan constitutes approval of a single-source procurement; no further approval or documentation is necessary.

#### **3.2.1.3.8 Pre-Release of Documents**

Early release of program documents can be an important part of communication with industry. Releasing draft functional requirements, draft specifications, or a draft screening information request (SIR) can be beneficial to industry, as well as the FAA. Early and more complete releases of the SIR and feedback from industry should be part of the market analysis strategy.

#### **3.2.1.3.9 Reserved**

#### **3.2.1.3.10 Reserved**

#### **3.2.1.3.11 Public Announcements Revised 6/2006**

##### **3.2.1.3.11.1 General Revised 1/2017**

All procurements anticipated to exceed \$150,000 must be publicly announced on the Internet or through other means. This requirement does not apply to noncompetitive awards to Socially and



Economically Disadvantaged Business (SEDB) (8(a)) firms and Service-Disabled Veteran Owned Small Business (SDVOSB) firms, emergency single source actions, purchases from an established qualified vendor list (QVL) or FSS, exercise of options, or changes. For actions not anticipated to exceed \$150,000, a public announcement is optional if it is not required by 3.2.1.3.11.2.

#### **3.2.1.3.11.2 Procurements Involving Products from Federal Prison Industries Revised 7/2008**

All procurements of products available from Federal Prison Industries (FPI) anticipated to exceed \$10,000 must be publicly announced on the Internet or through other means, including procurements where FPI products are determined not to be the best value to FAA at the market survey stage. This requirement does not apply to a procurement that satisfies an exception in AMS Policy 3.8.4.2 (concerning procurement of FPI products).

#### **3.2.1.3.12 OMB Circular A-76, Performance of Commercial Activities.**

OMB Circular A-76 (Revised), "Performance of Commercial Activities," establishes Federal policy for the competition of commercial activities. Inherently governmental activities are to be performed with Government personnel, but activities identified as not inherently governmental in nature are to be subjected to competition to determine if such activities should continue to be performed by Government personnel. The FAA will follow the policies of the Circular to the extent that such policies are consistent with FAA's statutory authority.

#### **3.2.1.4 Chief Financial Officer Requirements Revised 1/2011**

##### **3.2.1.4.1 Contract Line Item Structure Added 1/2011**

The Chief Financial Officer Act of 1990 requires FAA to furnish annual financial statements reflecting the assets of the agency to the Office of Management and Budget. To generate information needed for accurate financial statements, service organizations must establish appropriate contract line item structure and billing mechanisms for contracts so the agency can accurately state the value of its assets, and assure related accounting classifications are included on financial documents.

##### **3.2.1.4.2 Chief Financial Officer Approval Added 1/2011**

The Chief Financial Officer has approval authority over all proposed procurement actions of \$10 million or more.

#### **3.2.1.5 Disaster or Emergency Preparedness and Response Revised 7/2007**

##### **3.2.1.5.1 Local Area Set-Asides for Disaster or Emergency Added 7/2007**

The Contracting Officer may set-aside procurements for competition among only offerors residing or doing business primarily in a geographic area where the President has declared a major disaster or emergency.

#### **3.2.1.5.2 Continuity of Services-Mission Critical Contracts Added 7/2007**

FAA may designate mission critical contracts that require continued contractor performance during times of National Emergency or Incidents of National Significance, such as pandemic influenza. These contracts must include provisions and contractor plans detailing how essential services or supplies will still be adequately delivered.

### **3.2.2 Source Selection**

#### **3.2.2.1 Applicability**

Source selection policy and guidance apply to acquisitions for products and services except for real property, utilities, and agreements. There are two competitive procurement methods available for obtaining products and services through the FAA contracting process.

The first method is described under Complex and Noncommercial Source Selection and is used for complex, large dollar, developmental, noncommercial items and services. This is the method that typically would be used for investments approved by the Joint Resources Council.

The second method is described under Commercial and Simplified Purchase Method and, is typically used for commercial items that are less complex, smaller in dollar value, and shorter term. Such products or services may be routine in nature and are generally purchased on a fixed price basis.

#### **3.2.2.2 Policy Revised 1/2018**

The FAA procures products and services from sources offering the best value to satisfy FAA's mission needs. Considering complexity, dollar value, and availability of products and services in the marketplace, FAA has flexibility to use any method of procurement deemed appropriate to satisfy FAA's mission.

The FAA provides reasonable access to competition for vendors interested in doing business with FAA. Competition among two or more sources is the preferred method of procurement. When competition is not feasible, procurements may be on a single source basis if there is a documented rational for the decision; documentation for this decision is not required for procurements with a total estimated value of less than \$10,000.

Except for those acquisitions where the agency purchase card is being used as the procurement vehicle, or those acquisitions subject to AMS 3.8.4.2, acquisitions with a total estimated value

exceeding \$10,000 but not over \$150,000 are reserved exclusively for competition among socially and economically disadvantaged business [SEDB/(8(a))] vendors, pursuant to AMS policy 3.6.1.3.4. If the CO, with review by the cognizant small and disadvantaged business utilization specialist, determines that an SEDB/(8(a)) set-aside is not in FAA's best interest due to quality, price, or delivery, then the decision must be documented.

The CO must issue a public announcement informing industry of FAA's procurement strategy before, or concurrent with, releasing an initial SIR. Each SIR must contain specific evaluation criteria that FAA will use to evaluate offeror's submittals. When using complex and noncommercial source selection methods, FAA must include past performance as an evaluation factor. If appropriate, FAA may use process capability of suppliers as an evaluation factor according to established criteria. Cost or price considerations must be an evaluation factor in all final selection decisions. Any request for offer (RFO) must include a requirement for a formal cost or price proposal. The source evaluation team must document the findings of the evaluation. The source selection official (SSO) must base all selection or screening decisions on evaluation criteria established in each SIR. The CO must conduct debriefings with all offerors that request them.

Responsible contractors only may receive awards. To be determined responsible, a prospective contractor:

- ☐ Has or can obtain adequate financial resources to perform a contract;
- ☐ Has the ability to meet any required or proposed delivery schedules;
- ☐ Has a satisfactory performance history;
- ☐ Has a satisfactory record of integrity and proper business ethics;
- ☐ Has appropriate accounting and operational controls that may include, but are not limited to: production control, property control systems, quality assurance programs, and appropriate safety programs; and
- ☐ Is qualified and eligible to receive an award under applicable laws or regulations.

The CO's signing of the contract constitutes a determination that the prospective contractor is responsible with respect to that contract. When an offer is rejected because the prospective contractor is non-responsible, the CO must make a determination of non-responsibility. The CO has broad discretion in making this determination.

### **3.2.2.3 Complex and Noncommercial Source Selection**

This section establishes the FAA's policy for evaluating and selecting sources for the award of complex, noncommercial competitive contracts. This process consists of up to five distinct phases, with the screening phase being the cornerstone. The five phases are:

- ☐ Planning;
- ☐ Screening;
- ☐ Selection;
- ☐ Debriefing (as requested); and
- ☐ Lessons learned.

### **3.2.2.3.1 Selection Phases**

#### **3.2.2.3.1.1 Planning**

Refer to the procurement planning section for further guidance.

#### **3.2.2.3.1.2 Screening**

Screening is the process by which the FAA will determine which offeror provides the best value to the FAA. The process is flexible and allows selection and award after one screening request. This process allows the FAA to make an award considering only price and the price-related factors included in the SIR. The number of distinct screening steps for a particular procurement will vary, based on the complexity of the procurement. Provided below is guidance associated with the screening phase.

##### **3.2.2.3.1.2.1 Screening Information Request Revised 7/2007**

The purpose of the SIR is to obtain information, which will ultimately allow the FAA to identify the offeror that provides the best value, make a selection decision, and award the contract to conclude the competitive process. A SIR is a request by the FAA for documentation, information, presentations, proposals, or binding offers. Three categories of SIRs (see below) may be used according to the procurement strategy adopted by the service organization. Once the public announcement has been released, the SIR may be released to start the competitive process. The service organization will determine the type(s) of SIR(s) that are appropriate for each procurement.

For a given procurement, the FAA may make a selection decision after one SIR, or the FAA may have a series of SIRs (with a screening decision after each one) to arrive at the selection decision. This will depend on the types of products and services to be acquired and the specific source selection approach chosen by the service organization. When it is desired to make a selection decision after one SIR, that SIR should be a request for offer (see below). In general when multiple SIRs are contemplated, the initial SIR should request general information, and future SIRs should request successively more specific information.

Initial SIRs need not state firm requirements, thus allowing the FAA to convey its needs to offerors in the form of desired features, or other appropriate means. However, firm requirements ultimately will be established in all contracts.

Each SIR should contain the following information:

- ☐ Paper Reduction Act number OMB No. 2120-0595 on the cover page.
- ☐ A statement identifying the purpose of the SIR (request for information, request for offer, establishment of a QVL and screening).

- ☐ A definition of need,
- ☐ A request for specific information (with specific page and time limitations, if applicable),
- ☐ A closing date stating when submittals must be received in order to be considered or evaluated,
- ☐ Evaluation criteria (and relative importance, if applicable),
- ☐ A statement informing offerors how communications with them will be conducted during the screening, and
- ☐ An evaluation/procurement schedule (including revisions, as required).

The evaluation/procurement schedule should be realistic and should alert the offerors to the fact that the FAA plans to adhere to its schedule and that offerors interested in award will be expected to adhere to this schedule.

There are three categories of SIRs: qualification information, screening information, and request for offers. Each category of SIR is discussed in detail below.

### *Qualification Information*

Qualification information, used to qualify vendors and establish qualified vendor lists (QVLs), should be requested only if it is intended that the resultant QVL will be used for multiple FAA procurements.

Qualification information screens for those vendors that meet the FAA's stated minimum capabilities/requirements to be qualified to provide a given product or service. All vendors that meet the FAA's qualification requirements will be listed on the appropriate QVL for the stated products or services.

Requested qualification information (including equipment/products) should be tailored to solicit the information that will allow the FAA to determine which of the vendors meet the FAA's minimum qualification requirements for the required products or services. For products, the information required to make such a determination might be equipment/products for FAA testing, vendor testing, testing data, product documentation, and production capability. For services, the information required to make such a determination might be a capabilities statement and performance experience. For software-intensive products or services, the information required to make such a determination might include descriptions about the offeror's software development and maintenance processes, in addition to other general information suggested above for products or services.

Once qualification information is requested, received, and evaluated in accordance with the evaluation plan, a QVL will be established for the given product/service. Once such a list is established, only qualified vendors may compete for the products or services. Where a product available from Federal Prison Industries (FPI) is to be acquired via a QVL, any such acquisition must include FPI and follow the procedures set forth at T 3.8.4.A.4 unless the acquisition satisfies an exception in AMS 3.8.4.2. Public announcement is not required once the QVL is established. This list can be updated at the FAA's discretion. Each list should be reviewed regularly to determine whether it should be updated.

### *Screening Information*

Screening information allows the FAA to determine which offeror(s) are most likely to receive the award, and ultimately which offeror(s) will provide the FAA with the best value. The screening information requested in the SIR should focus on information that directly relates to the key discriminators for the procurement.

The following are examples of the types of information that may form the basis of a screening request:

- ☐ Equipment/products for FAA testing,
- ☐ Vendor testing,
- ☐ Testing data,
- ☐ Technical documentation (commercial, if available/practicable),
- ☐ Capability statements,
- ☐ Quality assurance information,
- ☐ Performance experience,
- ☐ Sample problems,
- ☐ Draft/model contracts,
- ☐ Technical proposals (including oral presentations, if appropriate/practicable),
- ☐ Commercial pricing information,
- ☐ Financial condition information,
- ☐ Cost or price information, and
- ☐ Cost or price proposals.

### *Request for Offer*

A request for offer is a request for an offeror to formally commit to provide the products or services required by the acquisition under stated terms and conditions. The response to the request for offer is a *binding offer*, which is intended to become a binding contract if/when it is signed by the CO. The request for offer may take the form of a SIR, a proposed contract, or a purchase order.

#### **3.2.2.3.1.2.2 Communications with Offerors**

Communications with all potential offerors should take place throughout the source selection process. During the screening, selection, and debriefing phases of source selection, communications are coordinated with the CO. Communications may start in the planning phase and continue through contract award. All SIRs should clearly inform offerors how communications will be handled during the initial screening phase.

The purpose of communications is to ensure there are mutual understandings between the FAA and the offerors about all aspects of the procurement, including the offerors' submittals/ proposals. Information disclosed as a result of oral or written communication with an offeror may be considered in the evaluation of an offeror's submittal(s).

To ensure that offerors fully understand the intent of the SIR (and the FAA's needs stated therein), the FAA may hold a pre-submittal conference and/or one-on-one meetings with individual offerors. One-on-one communications may continue throughout the process, as required, at the discretion of the service organization. Communications with one offeror do not necessitate communications with other offerors, since communications will be offeror-specific. Regardless of the varying level of communications with individual offerors, the CO should ensure that such communications do not afford any offeror an unfair competitive advantage. During these and future communications, as applicable, the FAA should encourage offerors to provide suggestions about all aspects of the procurement.

Communications may necessitate changes in the FAA's requirements or screening information request and such changes should be processed consistent with Section 3.2.2.3.1.2.4. Where communications do not result in any changes in the FAA's requirements, the FAA is not required to request or accept offeror revisions. The use of technical transference is always prohibited. Technical leveling and auctioning techniques are prohibited, except in the use of commercial competition techniques as described in Section 3.2.2.5.3.

#### **3.2.2.3.1.2.3 Receipt/Evaluation of Submittals**

Once offerors have submitted responses to a SIR, the service organization will evaluate the submittals in accordance with the evaluation criteria stated therein and the evaluation plan. To be considered for an award, an offeror must submit a response to the initial SIR, within the time specified in the SIR.

##### *Evaluation Criteria*

The evaluation criteria form the basis on which each offeror's submissions are to be evaluated. Once the criteria have been established and disclosed to offerors, criteria should not be modified without first notifying offerors competing at that stage of the process and allowing such offerors to revise their submissions accordingly. Each SIR must contain the specific evaluation criteria to be used to evaluate offeror submittals for that specific SIR. Evaluation criteria should be tailored to the characteristics of a particular requirement and should be limited to only the key discriminators in the ultimate selection decision. The criteria should avoid, whenever possible, the inclusion of detailed sub-criteria (or sub-criteria in general). Further, efforts should be made to ensure that there are no overlapping criteria. Initial SIRs do not require cost or price proposals but should require submission of more generalized cost or price estimates. Cost or price considerations must be an evaluation factor in all selection decision(s). For software acquisitions the criteria should include, whenever appropriate, an evaluation of the maturity of the offeror's software acquisition, development and maintenance processes that are relevant to the procurement. Such evaluations should be performed using standardized instruments such as a Capability-Maturity-Model-based Evaluation.

##### *Evaluation Plan*

An evaluation plan must be prepared by the service organization and approved by the SSO for all procurements accomplished under this section. Evaluation plans should be concise and tailored to the

specific needs of the procurement. The evaluation plan should include the name of the SSO and the names of the service organization members and evaluators, the evaluation criteria, the evaluation methods and processes, the schedule, and any other information related to the source selection. The evaluation plan should be completed and approved prior to the receipt of responses to any SIR requesting screening or qualification information.

### *Evaluation Method*

The evaluation methodology should be set up to allow for maximum flexibility in selecting the offeror(s) providing the best value. To facilitate such flexibility, the following should be considered in setting up evaluations:

- ☐ Relative importance between criteria is not required (when relative importance is used, the relative order of importance between criteria should be disclosed).
- ☐ Each SIR may incorporate separate and/or distinct criteria that relate to the specific SIR discriminators.
- ☐ The use of either adjectival or numerical ratings is acceptable.
- ☐ Comparative evaluations between offerors' proposals/products are acceptable.
- ☐ The service organization should be selective/inventive concerning the screening requirements for document submissions (e.g., oral presentations, sample tests, plant visits, etc.).
- ☐ Communications with offerors during the evaluation may help clarify submittals, allow a fuller understanding of the offeror submittals, and provide a more comprehensive evaluation.
- ☐ Testing of products is encouraged to the maximum extent practical ("try before you buy").
- ☐ Award based on initial offers to other than the low cost or price offer is allowed.

### *Evaluation Process*

The evaluation will be conducted by the service organization, in accordance with the stated evaluation criteria and evaluation plan. The service organization (including any additional required evaluators and/or advisors) should be limited in size and dedicated through the completion of the acquisition. The service organization is expected to apply sound judgment in determining appropriate variations and adaptations necessary for individual situations, provided that these do not constitute a departure from the basic concepts and intent of the evaluation plan and SIR(s).

Communications may be considered in the evaluation of an offeror's submittal(s). Verifiable information from outside sources may be considered in the evaluation and should be disclosed to the offeror during the communication process. Any such findings should be noted in the evaluation report.

### *Evaluation Report*

The service organization must document the results of the evaluation, including recommendations, if applicable.



#### **3.2.2.3.1.2.4 Changes in Requirements**

If, after release of a SIR, it is determined that there has been a change in the FAA's requirement(s), all offerors competing at that stage should be advised of the change(s) and afforded an opportunity to update their submittals accordingly.

The SSO has authority to waive a requirement at any time after release of a SIR, without notifying other offerors where the SIR states that offeror specific waiver requests will be considered, and the waiver does not affect a significant requirement that changes the essential character or conditions of the procurement.

All determinations relating to changes in requirements, including waivers, will be documented in the evaluation report.

#### **3.2.2.3.1.2.5 SSO Decision**

Based on a review of the service organization's evaluation report, the SSO may either:

- ☐ Make a selection decision (see the selection phase below);
- ☐ Make a screening decision by screening those offerors determined to be most likely to receive award, thus continuing the screening phase;
- ☐ Amend and re-open to initial offerors; or
- ☐ Cancel the procurement.

To ensure the integrity of the FAA competitive source selection process, all SSO decisions should be based on the evaluation criteria established in the SIR and have a rational basis. All offerors who are eliminated from the competition based on any screening decision should be provided with the basis for their elimination within five working days after the screening decision and should be informed that they may request a debriefing after contract award. During the screening process, the SSO may decide to eliminate an offeror from further consideration without considering the cost or pricing information that was submitted in the response to the SIR. However, the final selection decision must consider the cost or price information that was submitted as part of the proposal.

If a screening decision, rather than a selection decision, is made, the service organization should issue another SIR (and repeat the screening process stated above) in order to make a selection decision (or another screening decision) among the remaining offerors. The screening process, starting at the issuance of the SIR, may be repeated until a selection decision is made or the procurement is canceled. In some circumstances it may be appropriate to down-select to one offeror for negotiation. However, if the FAA and the selected offeror cannot come to an agreement, the FAA may select another competing offeror for communications/award without issuance of further SIRs.

#### **3.2.2.3.1.3 Selection Revised 10/2012**

The selection decision must be based on the stated evaluation criteria including cost or price considerations to identify the best value.

The service organization must brief the SSO on their evaluation findings. The selection of the offeror who is expected to provide the best value solution is a matter committed to the discretion of the SSO. The SSO applies sound business judgment to the evaluation of the offeror's proposed solution against the stated evaluation criteria. In each case, the SSO should provide a rational basis for the screening or selection decision. The SSO should document the selection decision in the SSO decision memorandum (in cases where the CO and the Contracting Officer's Representative are the only service organization members, the evaluation report and the SSO decision memorandum may be one report). In making the selection decision, the SSO may accept or reject the service organization's recommendations provided there is a rational basis.

Based on the SSO's decision, the CO will transmit a proposed contract to the selected offeror. The selected offeror will return a properly executed contract. Upon the CO's signature, the proposed contract becomes a binding contract.

#### **3.2.2.3.1.4 Debriefing**

Once an award has been made, all offerors who participated in the competitive process will be notified of the award and given three working days from receipt of the award notification to request a debriefing. Debriefings are intended to provide meaningful feedback to offerors on their submission. The purpose of the debriefing is to improve the offeror's ability to successfully compete for future FAA business by discussing the strengths and weaknesses of the offeror's submissions. The debriefing should provide the offeror with the following information:

- ☐ SSO's Selection Decision;
- ☐ Offeror's evaluated standings relative to the successful offeror(s); and
- ☐ Summary of the evaluation findings (excerpts from evaluation summary documentation relating to the specific offeror).

The CO should request detailed questions from the unsuccessful offeror so the FAA can provide meaningful information during the debriefing. Debriefings should be conducted, as soon as practicable, with all offerors that request them.

#### **3.2.2.3.1.5 Lessons Learned**

A lessons learned memorandum is a valuable tool in which the service organization can relay its procurement experiences to other FAA acquisition personnel. Once an award has been made, the service organization should communicate its learning experiences. The communication should highlight those issues/processes that had significant impact on their procurement. Further, the service organization should discuss changes that could be made to ensure a more comprehensive evaluation and/or more timely award.

#### **3.2.2.3.2 Reserved**

#### **3.2.2.3.2.1 Reserved**

#### **3.2.2.3.2.2 Reserved**

#### **3.2.2.3.2.3 Reserved**

#### **3.2.2.3.2.4 Reserved**

#### **3.2.2.3.2.5 Reserved**

#### **3.2.2.3.2.6 Reserved**

#### **3.2.2.4 Single-Source Selection Revised 1/2017**

The FAA may contract with a single-source when in FAA's best interest and the rational basis for the decision is documented. This rational basis may be based on actions necessary and important to support FAA's mission, such as emergencies, standardization, and only source available to satisfy a requirement within the time required. For procurements not anticipated to exceed \$10,000, there is no requirement for competition or single-source justification; requirements must not be split to meet this exception. This section 3.2.2.4 is not applicable to noncompetitive awards made to socially and economically disadvantaged businesses (SEDB)/(8(a)) or service-disabled veteran owned small businesses (SDVOSB), both of which are governed under AMS policy 3.6.

The decision to contract with a single-source may be made as part of overall program planning. The rational basis must be documented and approved as a part of program planning in the Implementation Strategy and Planning Document, a procurement plan, or as a separate document. If an Implementation Strategy and Planning Document is not required and the service organization determines that a procurement plan is unnecessary, a separate single-source justification must be documented and endorsed by the service organization and approved by the CO.

Market analysis should be conducted to support each single-source decision, except for emergencies. The method and extent of the analysis depends on the requirement.

The program office must provide the CO with supporting documentation that justifies the proposed single source strategy decision. Examples of information that might be documented include results of market analysis, cost or price data, unique qualifications or performance capability, and past performance. Mere conclusions, without adequate objective supporting data, are insufficient.

After the decision to contract with a single source has been approved, a public announcement must be made for any action over \$150,000, except in emergencies. The purpose of the announcement is to inform industry about the basis for the decision to contract with the single source.

A basic contract may be modified to exercise an option, or to satisfy a follow-on procurement for more of the same products or services without seeking additional competition when, based on market

analysis, there is a rational basis not to compete the requirement and the rational basis is documented and approved as discussed in this subsection.

The Contracting Officer must justify and document in accordance with this Section any increase in ceiling price of a time-and-materials or labor-hour contract.

#### **3.2.2.4.1 Single-Source Procurement Process**

The single-source procurement process includes planning, communications, award, and lessons learned. The actions for an individual phase within the process may vary depending on the particular circumstances.

##### **3.2.2.4.1.1 Emergencies**

An emergency situation, including but not limited to a threat to loss of life or property, national security, or restoration of an air traffic control facility, may require immediate contracting with a single source. In these instances, once funds are committed, the CO may verbally authorize a contractor to proceed and may combine single source phases or complete activities after the fact. As a minimum and as soon as practical, the CO should:

- ☐ Obtain funding certification;
- ☐ Document the single source decision; and
- ☐ Confirm authorization with written notification

##### **3.2.2.4.1.2 Non-emergencies Revised 1/2017**

For single-source non-emergency procurements, planning may include:

- ☐ Analyzing the market to determine potential sources;
- ☐ Developing an independent FAA cost estimate for any anticipated procurement action (to include modifications) whose total estimated value is \$150,000 or more, if not exempted by AMS 3.2.1.2.4;
- ☐ Obtaining funding certification;
- ☐ Obtaining approval of rationale for single source, except for follow-on or exercise of options; and
- ☐ Issuing public announcement, if in excess of \$150,000.

##### **3.2.2.4.1.3 Lessons Learned**

Communicating lessons learned is encouraged.

### **3.2.2.5 Commercial and Simplified Purchase Method Revised 6/2006**

The FAA may acquire commercial products and services from the competitive market place by using the simplified purchase method described herein and best commercial practices. Commercial and simplified purchases are used for commercial items or for products or services that have been sold at established catalog or market prices and are generally purchased on a fixed-price basis. However, procurement of products available for purchase from Federal Prison Industries is governed by AMS 3.8.4.2.

#### **3.2.2.5.1 Planning Revised 1/2017**

Procurement planning should be accomplished for all simplified and commercial purchases. The level of planning and announcement should be dictated by the nature and complexity of the requirement, commercial availability, dollar value, urgency of the requirement, and degree of previous procurement history.

The purpose of procurement planning is to:

- ☐ Determine whether commercial items meet the FAA's needs;
- ☐ Identify potential commercial sources; and
- ☐ Publicly announce requirements in excess of \$150,000.

Market analysis should be simple and straightforward, and may include information based on personal knowledge of the market, historical purchase information, qualified vendors list, commercial catalogs, trade journals, newspapers, other professional publications or local telephone directories.

Contracting mechanisms are at the discretion of the CO. Purchases may also be made using the following mechanisms:

- ☐ Purchase card;
- ☐ Purchase card checks;
- ☐ Purchase order;
- ☐ Contract;
- ☐ Orally (only in emergency situations) with proper documents processed as soon as possible following the oral order; and
- ☐ Other methods, including interagency agreements, when deemed appropriate and properly documented.

#### **3.2.2.5.2 Sourcing Determination**

The CO should solicit an appropriate number of vendors to ensure quality products and services are delivered in a timely manner at a fair and reasonable price. Requirements should be stated in

commercial terms generally understood and accepted in the industry.

### **3.2.2.5.3 Screening**

The CO should determine the appropriate screening approach and format for vendor's responses (e.g., electronic, written, oral, use of standard commercial or FAA forms). The CO may also conduct communications with individual offerors, as appropriate, to address offeror understanding of the requirement, performance capability, prices, and other terms and conditions. For commercially available products, the CO is encouraged to use "commercial competition techniques" such as continuing market research throughout the process by using vendor proposals as the source of prices and commercially available capabilities and sharing that information with other vendors.

### **3.2.2.5.4 Selection Decision and Award**

The CO's selection decision should be based on the FAA's stated evaluation criteria. The selection decision for commercial or simplified purchases should be based on the best value to the FAA including, but not limited to, factors such as price, functional specifications, delivery capability, warranty, and payment terms. This may be accomplished through establishing specific evaluation criteria with an accompanying evaluation plan as described under Complex, Noncommercial Source Selection, and making the selection based on the stated criterion. It may also be based on the most favorable solution available in the commercial market, as determined by the FAA, as described under Commercial and Simplified Purchase Method, or through a combination of methods depending on complexity, risk, dollar value, and urgency of the requirement.

#### **3.2.2.5.4.1 Documentation**

The method of selection and rationale for awards, and a determination that the price is fair and reasonable should be documented. The extent of the documentation depends on the complexity and dollar value of the procurement action.

### **3.2.2.5.5 Micro-Purchase Threshold Revised 4/2017**

Simplified purchases with a total estimated potential value (TEPV) under the micro-purchase threshold must be performed using the purchase card. The micro-purchase threshold is \$10,000 for commercial supplies, construction and services.

### **3.2.2.6 Unsolicited Proposals**

#### **3.2.2.6.1 Policy Added 10/2008**

The FAA may consider and accept unsolicited proposals when in the best interest of FAA. Unsolicited proposals are a valuable means for FAA to obtain innovative or unique methods or approaches to accomplishing its mission from sources outside FAA. Advertising material, commercial item offers, contributions, or technical correspondence are not considered to be unsolicited proposals. A valid unsolicited proposal must:

- ☐ Be innovative and unique;
- ☐ Be independently originated and developed by the offeror;
- ☐ Be prepared without FAA supervision;
- ☐ Include sufficient detail to permit a determination that the proposed work could benefit FAA's research and development, or other mission responsibilities; and
- ☐ Not be an advance proposal for a known FAA requirement that can be acquired by competitive methods.

#### **3.2.2.6.2 Receipt and Initial Review Revised 10/2008**

Unsolicited proposals should be addressed to:

Federal Aviation Administration  
Acquisition Policy and Oversight  
Acquisition Policy Group (AAP-100)  
Attn.: Unsolicited Proposal Coordinator  
800 Independence Avenue SW, Room 439W  
Washington, DC 20591

Once received, the FAA unsolicited proposal coordinator will review and determine if the document(s) meets the requirements of an unsolicited proposal.

#### **3.2.2.6.3 Prohibitions Added 10/2008**

FAA personnel should not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a SIR or in communications with any other firm unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, or idea available to FAA from other sources without restrictions.

FAA personnel must not disclose restrictively marked information included in an unsolicited proposal. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. 1905.

#### **3.2.2.7 Contractor Qualifications**

##### **3.2.2.7.1 Applicability**

This section applies to all contracts and to all proposed contracts with any prospective contractor that is located in the United States, its possessions, or Puerto Rico; or elsewhere, unless application would be inconsistent with the laws or customs where the contractor is located.

#### **3.2.2.7.2 Contractor Responsibility**

The CO must ensure that contracts are awarded only to responsible contractors (see Section 3.2.2.2). No award may be made unless the CO makes an affirmative determination of responsibility.

#### **3.2.2.7.3 Contractor Team Arrangements**

FAA will recognize the validity of contractor team arrangements, provided, the arrangements and company relationships are fully disclosed in an offer, or for arrangements entered into after submission of an offer, before the arrangement becomes effective.

#### **3.2.2.7.4 Suspension and Debarment**

FAA may suspend or debar contractors for cause. FAA will honor suspension, debarment, and ineligibility decisions of other agencies unless FAA has a compelling need to obtain the requirement from that contractor.

#### **3.2.2.8 Describing FAA Needs**

##### **3.2.2.8.1 Applicability**

The requirements herein apply to all FAA procurements and agreements except real property and utilities.

##### **3.2.2.8.2 Policy**

The FAA will describe its needs clearly and generally in writing, absent special or emergency circumstances. Service organizations may describe needs as minimum requirements, goals, or in another form well suited to the contemplated procurement.

#### **3.2.2.9 Rehabilitation Act**

The FAA must comply with Section 508 of the Rehabilitation Act of 1973 in developing, procuring, maintaining or using electronic and information technology. Section 508 of the



Rehabilitation Act of 1973 applies to all new procurements after June 21, 2001.

### **3.2.3 Pricing Methodology, Principles and Standards Revised 10/2011**

#### **3.2.3.1 Applicability Revised 10/2011**

This section applies to pre- and post-award pricing and analysis for contracts, subcontracts, orders, and modifications, excluding real property and utilities.

#### **3.2.3.2 Cost and Price Analysis Revised 1/2016**

The CO must make a determination that prices are fair and reasonable based on price analysis and, if necessary, cost analysis. Price analysis is the review of price without evaluating separate cost elements and profit/fee, and is required for all pricing actions. Cost analysis is the review of the individual cost elements and profit. Price analysis is the preferred method for evaluating competitive proposals. If the CO determines price competition is not adequate to support a determination of price reasonableness, the CO must require offerors to submit either certified cost or pricing data or information other than certified cost or pricing data. When the CO determines adequate price competition exists, certified cost or pricing data must not be requested. In situations with established catalog or market prices, prices set by law or regulation, or commercial items, price analysis is sufficient and the CO must not request cost data.

#### **3.2.3.3 Pre- and Post Award Audits Revised 1/2012**

The CO must request pre-award and post-award audits on all cost reimbursement contracts exceeding \$100 million. In addition, FAA will request pre-award and post-award audits on at least 15% of all cost reimbursement contracts not anticipated to exceed \$100 million. For other contract types, the CO may use any method of cost or price analysis to determine fair and reasonable prices.

Pre-award audits and post-award incurred cost audits are the preferred mechanism to assist the CO in ensuring valid indirect and direct costs are billed under cost reimbursement contracts. The CO is responsible for ensuring indirect and direct costs under a cost reimbursement contract are allowable. In situations where an incurred cost audit is not obtained, the CO will still ensure that only allowable costs are paid.

The sponsoring service organization will fund required pre- and post- award audits and must include an estimate of the cost of audits in the Acquisition Program Baseline; the Implementation Strategy and Planning Document will describe the approach, responsible organizations, and activities for obtaining audits.

#### **3.2.3.4 FAA Cost Principles Added 10/2011**

The FAA contract cost principles, as described in AMS Procurement Guidance, must be used to price contracts, subcontracts, orders, and modifications whenever cost analysis is performed. Cost principles must also be used for determining, negotiating, or allowing costs when required by a contract clause. The CO must incorporate FAA cost principles in contracts with commercial organizations as the basis for:

- ☐ Determining reimbursable costs under (a) cost-reimbursement contracts and cost-reimbursement subcontracts under these contracts performed by commercial organizations and (b) the cost-reimbursement portion of time-and-materials contracts except when material is priced on a basis other than at cost;
- ☐ Negotiating indirect cost rates, when FAA has division or corporate contract administration responsibilities, quick close-out procedures are used, or indirect rate caps are negotiated in the contract;
- ☐ Proposing, negotiating, or determining costs under terminated contracts;
- ☐ Price revision of fixed-price incentive contracts;
- ☐ Price re-determination of price re-determination contracts; and
- ☐ Pricing changes and other contract modifications.

When another Government agency has division or corporate contract administration responsibilities, FAA may agree to cost principles of the administering agency to determine or negotiate indirect rates not covered by (a) or (b) above.

### **3.2.3.5 Cost Accounting Standards Revised 10/2018**

All contractors and subcontractors must use Cost Accounting Standards (CAS) according to 48 CFR Part 99 for estimating, accumulating, and reporting costs in connection with pricing, administering, and settling disputes concerning all negotiated prime and subcontract procurements \$1,000,000 or more, except for contracts or subcontracts exempted by these regulations. The following categories of contracts and subcontracts are exempt from all CAS requirements:

- ☐ Negotiated contracts and subcontracts less than \$1,000,000. For purposes of this paragraph, an order issued by one segment to another segment must be treated as a subcontract;
- ☐ Contracts and subcontracts with small businesses;
- ☐ Contracts and subcontracts with foreign governments or their agents or instrumentalities or (insofar as the requirements of CAS other than 9904.401 and 99.402 are concerned) any contract or subcontract awarded to a foreign concern;
- ☐ Contracts and subcontracts in which the price is set by law or regulation;
- ☐ Firm fixed-priced and fixed-price with economic price adjustment (provided that price adjustment is not based on actual costs incurred), time-and-materials and labor-hour contracts and subcontracts for acquisition of commercial items;
- ☐ Contracts or subcontracts of less than \$7.5 million, provided that, at the time of award, the business unit of the contractor or subcontractor is not currently performing any CAS- covered

- contracts or subcontracts valued at \$7.5 million or greater;
- ☐ Contracts and subcontracts to be executed and performed entirely outside the United States, its territories, and possessions; and
- ☐ Firm fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data.

### **3.2.4 Types of Contracts**

#### **3.2.4.1 Applicability**

This section is applicable to contracts for procurement of all products and services.

#### **3.2.4.2 Policy**

Contracts may be of any type or combination of types except for cost plus a percentage of cost contracts, which are prohibited. The use of fixed-price contracts is strongly encouraged whenever appropriate. Development contracts may be incrementally phased fixed-price contracts. All contracts, except those issued in emergency situations, must be in writing.

#### **3.2.4.3 Guidance and Principles Revised 10/2018**

The types of contracts that may be used for FAA procurements are addressed in AMS guidance. Types of contracts other than those specified in the guidance may be used when approval has been obtained from an official one level above the CO within the contracting organization.

Contracting officers should clearly identify the type of contract(s) at the front of each contract and in SIRs, when appropriate. Where multiple types of contracts are used in one contract, performance requirements, terms and conditions, and prices (or estimated cost and fee) for each type of contract should be clearly separated and partitioned.

The multi-year contract may be used for the acquisition of products and services in accordance with any applicable restrictions and appropriate appropriations acts.

### **3.2.5 Contractor Ethical Guidelines**

#### **3.2.5.1 Applicability**

This policy is applicable to all contracts.

#### **3.2.5.2 Policy**

FAA business must be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none.

### **3.2.6 Purchase Card Program Added 1/2009**

#### **3.2.6.1 Applicability Added 1/2009**

Purchase card policy and corresponding guidance apply only to actions conducted through the FAA purchase card program.

#### **3.2.6.2 Policy Added 1/2009**

All procurements using an FAA purchase card must be conducted according to applicable laws, regulations, and FAA policy. AMS procurement guidance for purchase cards establishes standards for competition and source selection that supersedes other applicable AMS policy and guidance.

### **3.2.7 Anti-Counterfeit Management Added 4/2014**

#### **3.2.7.1 Applicability Added 4/2014**

Anti-Counterfeit policy and non-conforming parts requirements are applicable to (1) contracts over \$50M; (2) construction contracts for NAS applications over \$2M; and (3) office equipment and/or supplies for NAS applications over \$2M.

#### **3.2.7.2 Suspected Counterfeit and Non-Conforming Parts Added 4/2014**

Anti-Counterfeit policy, guidance and procedures apply to securing the FAA equipment supply chain from counterfeit and non-conforming parts.

The CO must ensure that instruction to contractors result in the most efficient and economical way to mitigate the entry of suspected counterfeit and non-conforming parts in the FAA supply chain by:

- ☐ Not knowingly procuring suspected counterfeit and non-conforming parts.
- ☐ Documenting all occurrences of suspected and confirmed counterfeit parts in the appropriate reporting system, including the Government-Industry Data Exchange Program (GIDEP).
- ☐ Making information about counterfeiting accessible at all levels of the FAA supply chain as a method to prevent further counterfeiting.
- ☐ Notifying the appropriate FAA investigative organization, or US Government intelligence

authorities, and those who use the suspected and confirmed counterfeit parts, of incidents at the earliest opportunity

### **3.3 Contract Funding and Payment Revised 10/2011**

#### **3.3.1 Contract Funding and Payment**

Contract payment processes expedite the performance of essential contracts. The FAA will structure payment plans and schedules that are conducive to efficient and economical contract performance.

##### **3.3.1.1 Applicability**

This section applies to all contracts except real property and utilities. This section includes:

- ☐ Payments;
- ☐ Prompt payment;
- ☐ Non-delivery payments (commercial and noncommercial);
- ☐ Contract funding; and
- ☐ Debt collection.

##### **3.3.1.2 Policy**

###### **3.3.1.2.1 Payment**

Prudent contract payment schemes expedite the performance of essential contracts. The CO should strive to structure the contract to allow frequent partial deliveries. If partial deliveries are not possible or the interval between deliveries is long, non-delivery payments may be necessary for efficient and economical contract performance.

###### **3.3.1.2.2 Prompt Payment Revised 4/2012**

The FAA should make payments for all acceptable deliveries within 30 days after receipt of a proper invoice and receiving report (15 days for contracts with small businesses, whenever practicable). Interest will apply to any payment later than 30 days. However, except under contracts for services, interest will not apply to late payments on interim vouchers under time- and-material, labor-hour, and cost reimbursement contracts.

###### **3.3.1.2.3 Non-delivery Payments (Commercial and Noncommercial)**

The CO may use any of the non-delivery payment methods available for use. Other types of non-

delivery payments may be made as long as they are mutually agreed upon and the interest of the FAA and the U.S. taxpayer are protected (e.g., security, adequate accounting system, etc.). All non-delivery payment plans not described in this section require approval one level above the CO.

#### **3.3.1.2.4 Contract Funding**

The FAA must comply with the Anti-Deficiency Act and other fiscal laws.

#### **3.3.1.2.5 Debt Collection**

Debt collection is the responsibility of the CO in coordination with the payment office. Interest must be assessed on all uncollected debt in accordance with this section.

### **3.3.2 Reserved Revised 10/2011**

## **3.4 Bonds, Insurance, and Taxes**

### **3.4.1 Bonds and Insurance**

#### **3.4.1.1 Applicability Revised 7/2008**

This section applies to construction contracts subject to the Miller Act, and to any other contracts that the CO determines would benefit from use of bonds, guarantees, and insurance to protect FAA's interest.

#### **3.4.1.2 Policy Revised 10/2010**

The FAA will comply with the intent of the Miller Act (40 U.S.C. 270a-270f) by requiring payment and performance bonds for construction contracts over \$150,000. The FAA may also require proposal guarantees, payment bonds, performance bonds, and insurance for any contract when necessary to protect FAA's interests.

### **3.4.2 Taxes**

#### **3.4.2.1 Applicability**

This section prescribes guidance for (a) using tax clauses in contracts (including foreign contracts), (b) asserting immunity or exemption from taxes, and (c) obtaining tax refunds. It explains Federal, State, and local taxes on certain products and services acquired by executive agencies and the applicability of such taxes to the Federal Government. It is for the general information of Government personnel and does not present the full scope of the tax laws and regulations.

### **3.4.2.2 Policy**

The FAA policy is to provide appropriate contract clauses for (a) Federal Excise Taxes levied on the sale or use of particular products or services, (b) exemption of Federal Excise Taxes, and (c) exemption of Federal purchases and property from state and local taxes. The service organization must use the appropriate clauses for the tax situation at hand.

## **3.5 Patents, Rights in Data and Copyrights**

### **3.5.1 Applicability**

The policies prescribed in this section are applicable to all contracts involving intellectual property issues.

### **3.5.2 Policy**

Patents, copyrights, and other rights in data are valuable intellectual property. The FAA acquires patents, copyrights, and other rights in data as necessary to:

- ☐ Enhance the competitive process;
- ☐ Ensure the ability to use, maintain, repair, and modify products procured under FAA contracts;
- ☐ Recoup development costs of, and fund improvements in, products and equipment;
- ☐ Develop products for FAA and public use; and
- ☐ Protect its position in the competitive marketplace.

## **3.6 Socio-Economic and Other Policies and Programs**

### **3.6.1 Small Business Development Program Revised 7/2005**

#### **3.6.1.1 Applicability Revised 10/2012**

The policies in this Section apply to FAA procurements for products and services but exclude those procurements using purchase cards, purchase card checks, electric utilities, real property, grants, memoranda of understanding, non-appropriated funds, contracts to be awarded and performed entirely outside of the United States, contracts with foreign governments or international organizations, agreements, and required sources of products/services and use of Government sources including products available from Federal Prison Industries (FPI) (refer to AMS Small Business Program Development Guidance).

### **3.6.1.2 Policy Revised 1/2010**

The FAA must comply with Presidential directives, constitutional standards, public laws, and DOT Secretary Policy Statements to promote, expand, aggressively provide procurement opportunities as prime contractors and as subcontractors for small businesses, small businesses owned by socially and economically disadvantaged individuals, women-owned small businesses and service-disabled veteran owned small businesses. The FAA's Small Business Development staff currently has and will continue to have responsibility for:

- ☐ FAA's policy and program on the utilization of small business and small businesses owned and controlled by socially and economically disadvantaged individuals;
- ☐ Establishing mechanisms for monitoring and evaluating the effectiveness of the small business program; and
- ☐ Ensuring FAA-wide implementation and accomplishment of the small business program objectives.

Key features of the small business program will include:

- ☐ Competitive/noncompetitive set-asides;
- ☐ Establishment of eligibility criteria and measurable prime contracting and subcontracting goals;
- ☐ Vigorous outreach efforts;
- ☐ Mentor-Protégé Program; and
- ☐ Small business forums.

### **3.6.1.3 Principles for the Small Business Development Program Revised 7/2005**

#### **3.6.1.3.1 Program Goals Revised 7/2005**

Prior to the end of each fiscal year, measurable annual FAA wide major procurement program goals (including subcontracting goals) will be established to provide attainable and reasonable opportunities for small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals to participate in contracts awarded by the FAA for the next fiscal year.

To ensure attainment of the program goals, senior management will be held responsible and goal achievement will be monitored at all levels in the agency. Additionally, the Small Business Development Staff will conduct vigorous outreach efforts that may include participating in Small



Business Conferences, Small Business forums, etc.

#### **3.6.1.3.2 Prime Contracting with Small Businesses Revised 1/2017**

When appropriate, individual procurements may be set aside for competitive award among small businesses. Individual procurements may also be set-aside for small businesses two categories (combined set-asides).

#### **3.6.1.3.3 Reserved Revised 1/2017**

#### **3.6.1.3.4 Set-Asides to Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals (8(a) Certified) Revised 1/2017**

Except for those acquisitions being purchased using the agency purchase card, or those acquisitions subject to AMS 3.8.4.2, each acquisition of supplies or services having an anticipated dollar value exceeding \$10,000, but not over \$150,000, is automatically reserved exclusively for SEDB (8(a)) vendors unless the Contracting Officer, with review of the cognizant Small and Small Disadvantaged Utilization Specialist, determines there is not a reasonable expectation of obtaining offers from responsible SEDB (8(a)) concerns that are competitive in terms of market prices, quality and delivery. This requirement applies to Screening Information Requests (SIRs) issued on or after June 1, 2015. The Contracting Officer must submit the Small Business Set-Aside Determination and Coordination Form for all such acquisitions (see also AMS Small Business Development Program Guidance for use of this form). **These procurements may be either competitive or noncompetitive.**

In addition, other individual procurements outside the above specified range may be set-aside for competitive award among Socially and Economically Disadvantaged Businesses (SEDBs) that are 8(a) certified, when appropriate.

#### **3.6.1.3.5 Noncompetitive Awards to SEDB (8(a)) Vendors Revised 7/2016**

Individual procurements may be noncompetitively awarded to SEDB (8(a)) vendors when the anticipated total value of the procurement (including all options) is \$6.5 million or below for procurements assigned manufacturing North American Industry Classification System codes and \$4 million or below for all other procurements. Where a procurement exceeds the noncompetitive threshold, the procurement may be awarded on a noncompetitive basis to SEDB (8(a)) vendors if: (1) there is not a reasonable expectation that at least two or more SEDB (8(a)) sources will submit offers that are in the Government's best interest in terms of quality, price and/or delivery; or (2) the award will be made to a concern owned by an Indian tribe or an Alaska Native Corporation. Noncompetitive awards above \$22 million to SEDB 8(a) vendors must be justified and documented as indicated in AMS Small Business Development Procurement Guidance.

#### **3.6.1.3.6 Set-Asides to Service-Disabled Veteran Owned Small Businesses Revised 10/2008**

When appropriate, individual procurements may be awarded noncompetitively or set-aside competitively for award among service-disabled veteran owned small businesses.

#### **3.6.1.3.7 Subcontracting with Small Businesses and Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals**

When appropriate, subcontracting opportunities will be encouraged.

### **3.6.2 Labor Laws**

#### **3.6.2.1 Applicability Revised 10/2014**

The Davis-Bacon Act (40 U.S.C. § 276a), Convict Labor (18 U.S.C. § 4082-(c)(2)), Copeland Act (18 U.S.C. § 874 and 40 U.S.C. § 276c), Walsh-Healey Public Contracts Act (41 U.S.C. §§ 6501-6511), Equal Employment Opportunity (Executive Order 11,141, 29 FR 2477), Service Contract Act (41 U.S.C. §§ 6701-6707), and other labor laws and regulations will apply to acquisitions for products, services, and construction.

#### **3.6.2.2 Policy Revised 4/2017**

The FAA will comply with labor laws when acquiring products, services, and construction, consistent with the thresholds established herein the Acquisition Management System.

### **3.6.3 Environment, Conservation, Occupational Safety, and Drug-Free Workplace Revised 4/2009**

#### **3.6.3.1 Applicability Revised 4/2009**

This section applies to all FAA Screening Information Requests (SIRs) and contracts performed in the United States.

#### **3.6.3.2 Policy Revised 10/2016**

It is the policy of FAA to contract with entities that are in compliance with applicable environmental, energy, safety, and drug-free workplace laws, orders, and regulations.

FAA will ensure that sustainable acquisition requirements are included to the maximum extent practicable for all applicable procurements in the planning, award, and execution phases of the

acquisition.

To achieve sustainable acquisition goals, FAA will meet statutory mandates for purchasing preference. If statutory mandates do not exist, FAA will give preference to purchasing sustainable products and services identified by EPA programs. Where no statutory mandates, EPA programs, or EPA recommended specifications, labels, or standards exist, FAA will give preference to non-federal specifications, standards, or labels to further advance sustainable procurements.

- ☐ FAA elects to follow the statutory mandates requiring purchase preference for: recycled-content products designated by EPA; energy and water efficient products and services, such as ENERGY STAR® qualified and Federal Energy Management Program (FEMP)-designated products; and the U.S. Department of Agriculture (USDA) BioPreferred and biobased designated products.
- ☐ Sustainable products and services identified by EPA programs include: Significant New Alternative Policy (SNAP) chemicals, WaterSense® certified products and services; Safer Choice® labeled products; and SmartWay® Transport partners and SmartWay products.
- ☐ Non-federal specifications, standards, or labels to further advance sustainable procurements must meet or exceed specifications, standards, or labels recommended by EPA or meet environmental criteria developed or adopted by voluntary consensus standards bodies consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (P.L. 104-113) and OMB Circular A-119.

Sustainable acquisition requirements are considered practicable unless there is an allowable exception for acquiring sustainable products or services. An allowable exception is available if any of the following conditions exist:

- ☐ Product or service cannot be acquired competitively within a reasonable performance schedule.
- ☐ Product or service cannot be acquired that meets reasonable performance requirements.
- ☐ Product or service cannot be acquired at a reasonable price. The price must be deemed unreasonable when the total life cycle costs are significantly higher for the sustainable product or service versus the non-sustainable product or service. Life cycle costs are determined by combining the initial costs of a product or service with any additional costs or revenues generated from that product or service during its entire life.
- ☐ An exception is provided by statute, such as the exception to procuring ENERGY STAR or FEMP-designated products under 42 U.S.C. § 8259b(b)(2).

If a product meets any of the aforementioned exceptions, FAA should strive to purchase a comparable product that is still environmentally sustainable (e.g., if a WaterSense product is not available at a reasonable price, FAA should purchase a similar product that is water efficient and available at a

reasonable price). If at any point during the acquisition it is determined that a contract action cannot comply with the sustainable requirements due to an exception, the Contracting Officer must document, within the contract file, the exception being used and rationale for using the exception.

### **3.6.3.3 Environmental Performance and Sustainability Factors Revised 10/2016**

#### **3.6.3.3.1 Recycled-Content Products Revised 10/2016**

In order to meet the objectives of Executive Order (EO) 13693, FAA will procure products composed of recycled content, which are produced with waste materials and byproducts recovered or diverted from solid waste. Recycled-content products are designated in EPA's Comprehensive Procurement Guidelines (CPG) and FAA will purchase these products at the highest percentage of recovered content practicable. FAA should purchase uncoated paper (including office products or support services that include the supply of written documents) containing at least 50 percent post-consumer recycled content whenever practicable, but if not practicable, FAA will purchase uncoated printing and writing paper containing at least 30 percent post-consumer recycled content or higher. These considerations will be identified in procurement planning and SIR/contract documents.

#### **3.6.3.3.2 Energy Conservation and Efficiency Revised 10/2016**

In order to meet the objectives of EO 13693, the Energy Policy Act of 2005 (EPA 2005), the Energy Independence and Security Act of 2007 (EISA 2007), and FAA Order 1053.1B (or the latest version), FAA will procure the most energy efficient products available, where life-cycle cost-effective and consistent with the mission need. In doing so, FAA will procure ENERGY STAR labeled and FEMP-designated products as well as electronic products or services that meet or exceed specifications, standards, or labels recommended by the EPA (e.g. Electronic Products Assessment Tool (EPEAT) electronic products is the highest assessment rating available in FY16). These considerations will be identified in the procurement planning and SIR/contract documents when procuring products or services affecting FAA energy consumption.

#### **3.6.3.3.3 BioPreferred and Biobased Designated Products Added 10/2016**

In order to meet the objectives of EO 13693, the Farm Security and Rural Investment Act of 2002, the Food Conservation and Energy Act of 2008, and the Agricultural Act of 2014, FAA will purchase and use USDA BioPreferred and biobased designated products, which are products derived from plants and other renewable agricultural, marine, and forestry materials and provide an alternative to conventional petroleum derived products. FAA will give preference to products composed of the highest percentage of biobased material practicable. These considerations will be identified in procurement planning, SIR/contract documents.

#### **3.6.3.3.4 Alternatives to Ozone Depleting Substances and High Global Warming Potential**

## **Hydrofluorocarbons Added 10/2016**

In order to meet the objectives of EO 13693 and the Clean Air Act, FAA will procure Significant New Alternative Policy (SNAP) chemicals or other alternatives to ozone-depleting substances and high global warming potential hydrofluorocarbons, where feasible, as identified by SNAP. FAA will ensure that the product complies with statutory mandates (e.g., biobased) if applicable to the product category. These considerations will be identified in the procurement planning and SIR/contract documents.

### **3.6.3.3.5 Water Conservation and Efficiency Added 10/2016**

In order to meet the objectives of EO 13693 and FAA Order 1053.1B (or the latest version), FAA will purchase WaterSense certified products and services. These considerations will be identified in the procurement planning and SIR/contract documents when procuring products or services affecting FAA water consumption.

### **3.6.3.3.6 Chemicals Management Added 10/2016**

In order to meet the objectives of EO 13693, FAA will purchase Safer Choice labeled products to reduce the overall quantity of chemicals and toxic materials acquired, used, and disposed of. FAA will ensure that the product complies with the statutory mandates (e.g., biobased) if applicable to the product category. These considerations will be identified in the procurement planning and SIR/contract documents.

Additionally, FAA will implement EPA's Integrated Pest Management Principles and Water Efficient Landscaping practices to reduce and eliminate the use of toxic and hazardous chemicals and materials.

### **3.6.3.3.7 Fuel Efficient Products and Services Added 10/2016**

In order to meet the objectives of EO 13693, FAA will improve supply chain efficiency by reducing the impact of shipping and transportation when procuring goods and services. As such, FAA will procure 1) SmartWay products; and 2) services from SmartWay Transport partners. These considerations will be identified in the procurement planning and SIR/contract documents.

### **3.6.3.4 Delivery of Electronic and Paper Documents Revised 10/2016**

Contractors must submit acquisition-related documents electronically, to the maximum extent practicable. When paper documents are submitted to the FAA, they must be printed or copied double-sided. Refer to the Recycled-Content Products Policy above for additional requirements for delivery of paper documents.

### **3.6.3.5 Drug-Free Workplace Revised 4/2009**

The FAA must deem any offer unqualified and ineligible for award unless the offeror has certified that it is a drug free workplace. After contract award, if there is adequate evidence to suspect that the contractor submitted a false certification or failed to comply with the certification, the FAA may suspend payments, terminate the contract for default, debar or suspend the contractor, or take other appropriate action to obtain quality performance by a lawfully operating contractor.

### **3.6.3.6 Hazardous and Radioactive Materials**

#### **3.6.3.6.1 Hazardous Material Identification and Safety Data Revised 10/2016**

It is FAA policy to comply with Occupational Safety and Health Administration (OSHA) regulations on hazardous materials, conditions and precautions. To comply with these regulations, FAA must obtain information from contractors when hazardous materials are provided to FAA. Contractors are required to identify any hazardous materials delivered under a contract, as defined in Federal Standard 313; and must provide Safety Data Sheets for all identified hazardous materials.

#### **3.6.3.6.2 Notice of Radioactive Material Revised 10/2016**

The contractor is required to notify the FAA, prior to delivery, of radioactive material that requires specific licensing under the Atomic Energy Act of 1954; or material with a specific activity that is greater than 0.002 microcuries per gram, or a specific activity per item exceeds 0.01 microcuries.

### **3.6.3.7 Waste Management Added 10/2016**

Contractors must comply with the waste reduction and reporting requirements set forth by FAA with regard to increasing the diversion of non-hazardous solid waste, construction and demolition (C&D) debris, and organic and compostable materials from the waste stream. Waste management will further be accomplished through employing source reduction strategies (such as purchasing items that require less packaging materials during shipping) and reducing printing paper use. Waste management factors must be considered, to the maximum extent practicable, in acquisitions where their application would be meaningful and consistent with meeting FAA requirements. These factors must be identified in the procurement planning and SIR/ contract documents.

### **3.6.4 Foreign Acquisition Revised 4/2014**

#### **3.6.4.1 Buy American Act Added 10/2014**

The FAA will comply with the tenets of the Buy-American Act (41 U.S.C. §§ 8301-8305) as part of the agency's best value determination during the contractor selection process.

#### **3.6.4.2 Export Control Added 4/2014**

The FAA will comply with all U. S. Export Control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130 and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 774.

#### **3.6.5 Indian Incentive Program**

The FAA is subject to the requirements of paragraph 1544 of 25 U.S.C. that establishes an incentive payment for contractors of Federal agencies that subcontract with or use suppliers who are Indian organizations or Indian-owned economic enterprises in performing the contract. This incentive payment may be equal to 5 percent of the amount paid, or to be paid, to a qualifying subcontractor or supplier that is an Indian organization or Indian-Owned economic enterprise.

#### **3.6.6 Fastener Quality Act**

The FAA must comply with Pub. L. 101-592, as amended by Pub. L. 104-113 in equipment and construction applications which require the use of high-strength fasteners.

### **3.7 Freedom of Information Revised 10/2018**

#### **3.7.1 Applicability Revised 10/2018**

Freedom of information is applicable to all FAA procurements including agreements, real property, utilities, credit cards, commercial and simplified purchase method.

#### **3.7.2 Policy Revised 10/2018**

The FAA will comply with the Freedom of Information Act which requires that the FAA provide information to the public by (i) publication in the Federal Register; (ii) providing an opportunity to read and copy records; or (iii) upon a reasonable request. Certain information may be exempted from disclosure; such as, classified information, trade secrets, and confidential commercial or financial information, interagency or intra-agency memoranda, or to personal and medical information pertaining to an individual.

### **3.8 Special Categories of Contracting**

#### **3.8.1 Agreements**

##### **3.8.1.1 Applicability**

### **3.8.1.2 Use of Agreements Revised 1/2012**

It is FAA's policy to use various agreements, other than procurement contracts, to obtain or provide services and supplies when necessary to accomplish the mission of FAA. These agreements may be made with another Federal agency or instrumentality of the Federal government, a modal administration within the Department of Transportation, a state, local government, municipality, or other public entity, and private entities. (See 49 U.S.C. 106(l)). The following is a list of the more commonly used agreements (other than procurement contracts):

- ☐ Interagency agreements;
- ☐ Intra-agency agreements;
- ☐ Reimbursable agreements;
- ☐ Agreements with other public entities; and
- ☐ Agreements to provide services to a private entity on an individualized basis.

### **3.8.1.3 Principles for Agreements**

Agreements with other Federal Agencies (as defined in section 551(1) of title 5) are appropriate where FAA provides services or supplies or facilities to another Federal agency, or where FAA is the requesting agency to receive services, or supplies, or facilities from another Federal agency or that agency's contractor. Where the FAA and the Department of Defense are engaged in joint actions to improve or replenish the national air traffic system, the AMS policies governing FAA acquisitions are applicable. In those instances where the FAA acquires goods or services through the Department of Defense or other agencies, the FAA is bound by the acquisition laws governing those agencies.

## **3.8.2 Service Contracting**

### **3.8.2.1 Applicability**

This section applies to advisory and assistance contracts and other services, including personal services such as employees support service as provided for in FAA's Personnel Management System. This section does not apply to FAA employees, temporary, part-time or permanent appointed or hired in accordance with the other applicable portions of the FAA Personnel Management System.

### **3.8.2.2 Policy**

The FAA will generally rely on the private sector for commercial services (see OMB Circular No. A-76, Policies for Acquiring Commercial or Industrial Products and Services Need by the Government). In no event may a contract be awarded for the performance of an inherently governmental function. Advisory and assistance contracts must comply with all applicable laws concerning post-employment and other conflict of interest and ethics laws and policies.



### **3.8.2.3 Personal Services Contracts**

#### **3.8.2.3.1 Reserved**

#### **3.8.2.3.2 Determination**

The FAA may award personal services contracts when the head of a line of business determines that a personal service contract is in the best interest of the agency after thorough evaluation, which includes, but is not limited to the following factors:

- ☐ Worker's compensation payments and other tax implications;
- ☐ Government's potential liability for services performed;
- ☐ Availability of temporary hires to perform the desired services;
- ☐ Demonstration of tangible benefits to the agency;
- ☐ Detailed cost comparison demonstrating a financial advantage to the Government from such contract;
- ☐ Potential post employment restrictions applicable to former employees;
- ☐ Legal determination that the work to be performed is not inherently governmental; and
- ☐ Potential post employment restrictions pursuant to Federal Workforce Restructuring Act of 1994 Public Law 103-226.

Although personal service contracts are permitted, they should be used only when there is a clear demonstrated financial and program benefit to the FAA. The determination required herein is non-delegable and must be reviewed for legal sufficiency by the Office of the Chief Counsel.

### **3.8.2.4 Performance Based Service Contracts**

Service contracts should incorporate performance based contracting methods to encourage contractor innovation and efficiency, and to help ensure contractors provide timely, cost- effective, and quality performance with measurable outcomes as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work.

### **3.8.2.5 Cloud Computing Services Contracts Added 10/2016**

All cloud computing services contracts will be conducted in accordance with Federal Risk and Authorization Management Program (FedRAMP) requirements. Further information on FedRAMP may be found at [www.fedramp.gov](http://www.fedramp.gov).

## **3.8.3 Federal Supply Schedule Contracts**

### **3.8.3.1 Applicability**

This section is applicable when FAA awards Federal Supply Schedule delivery orders for recurring products and services. Additionally, this section addresses requirements to utilize Federal Supply Schedules awarded by GSA, when the FAA is identified in the schedule as a mandatory/non-mandatory user of any supply/service on the schedule.

### **3.8.3.2 Policy**

The FAA may consider awarding Federal Supply Schedule contracts, or placing orders against Federal Supply Schedules awarded by GSA, for recurring products and services when it is determined to be in the best interest of the FAA.

## **3.8.4 Required Sources of Products/Services and Use of Government Sources**

### **3.8.4.1 Applicability Revised 2/2005**

This section applies to procurement of all products and services, except for real property, utilities, and construction.

### **3.8.4.2 Government Sources for Products and Services Revised 10/2014**

The CO may use available Government sources when they offer the best value to satisfy FAA's mission need. However, pursuant to FAA policy, the CO must acquire products and services offered through the Randolph-Sheppard Vending Facilities Program (20 U.S.C. 107) and AbilityOne (formerly the Javits-Wagner-O'Day Program) (41 U.S.C. §§ 8501-8506).

FAA policy also requires that FAA purchase products offered by Federal Prison Industries (FPI) when the FPI's product represents the best value to FAA, unless an exception below applies. In making a best value determination for FPI products, the CO must utilize the procedures in AMS Procurement Guidance T3.8.4.A.4. The CO must post an announcement for any procurement for products available from FPI in accordance with AMS Policy 3.2.1.3.12. This policy concerning FPI does not apply if:

- (a) The monetary value of the procurement would not require a competitive procurement process under AMS Policy 3.2.2.4;
- (b) A market analysis would not be required under AMS Policy 3.2.2.4 to support a single-source procurement of the product;
- (c) Suitable used or excess products are available from the government; (d)

The products are acquired and used outside the United States;

- (e) Services are being acquired; or

(f) FAA has obtained a waiver from FPI with respect to the particular product or class of products at issue in the procurement.

The CO may allow contractors with cost-reimbursement contracts to use Government sources when in FAA's best interest and the products or services are available. Contractors with fixed-price contracts to protect classified information may acquire security equipment through GSA sources after CO approval.

### **3.8.5 Leases Added 1/2006**

#### **3.8.5.1 Applicability Added 1/2006**

This section applies to products, services and real property to the extent authorized by law. For Real Property specific policy and Guidance see Section 4.2 Real Property.

#### **3.8.5.2 Policy Added 1/2006**

It is the policy of the FAA to enter into leases for various products, services or real property when it is determined by the Contracting Officer, based on financial and other considerations, to be in the best interest of the Government compared to the outright purchase of such assets, real property, or services.

It is also FAA policy to avoid establishment of capital leases or lease purchases unless the requesting organization demonstrates they have complied with the requirements of OMB Circular A-11, Part 8, Appendix B "Scoring of Lease Purchases and Leases of Capital Assets".

### **3.8.6 Strategic Sourcing Revised 7/2007**

The FAA is leveraging its spending through strategic sourcing and will award contracts for products and services to help the agency optimize performance and minimize price to increase the value of each dollar spent. Therefore, when a needed product or service is available through a strategic sourcing contract, purchasing employees must use a strategic sourcing contract.

All strategic sourcing contracts are established following the AMS Policy and Guidance. To increase achievement of socio-economic acquisition goals, all strategic sourcing procurements must be balanced with socio-economic goals for small businesses, small disadvantaged businesses, women-owned small businesses, veteran-owned businesses, and service-disabled veteran-owned businesses in accordance with AMS Policy 3.6.1 Small Business Development Program.

When performance of any strategic sourcing contract requires access to FAA facilities and/or requires handling of sensitive material, the contract must include all of the appropriate clauses and/or restrictions and comply with FAA Order 1600.72A, Contractor and Industrial Security Program and FAA Order 1600.75, Protecting Sensitive Unclassified Information (SUI).

When an organization is going to strategically source a product or service, it must use mandatory government sources as described in AMS Policy 3.8.4 and Procurement Guidance T3.8.4A.

### **3.8.7 Construction Contracting Added 7/2007**

#### **3.8.7.1 Applicability Added 7/2007**

This section applies to construction contracts, contracts for dismantling, demolition, or removal of improvements, and to the construction portion of contracts for products or services.

#### **3.8.7.2 Policy Added 7/2007**

If portions of multipurpose contracts are so commingled that priced deliverables for construction, service, or supply cannot be segregated and the predominant purpose of the contract is construction, the contract will be classified as construction.

### **3.9 Resolution of Protests and Contract Disputes**

#### **3.9.1 Applicability**

Protest and contract disputes guidance and principles outlined herein apply to all FAA Screening Information Requests (SIRs), contract awards, and contracts.

#### **3.9.2 Policy Revised 1/2017**

By statute, and consistent with the Fundamental Principles of the AMS, the FAA Dispute Resolution Process, administered by the Office of Dispute Resolution for Acquisition (ODRA), serves as the Administrator's exclusive independent venue for bid protests and contract disputes arising under or relating to the AMS. Review of procurement controversies by the Administrator, through the ODRA, helps protect the quality and integrity of the Agency's acquisitions, promotes the public's confidence and ensures that AMS procedures and policies are followed.

The FAA is committed to the early and expeditious resolution of controversy using voluntary mediation, fact-finding, arbitration and other techniques collectively known as "alternative dispute resolution" (ADR). The FAA has pledged to utilize ADR techniques to the maximum extent practicable when such voluntary techniques will produce a fair and expeditious disposition of a controversy.

Protests concerning FAA SIRs or awards of contracts, and contract disputes arising under or related to FAA contracts, must be resolved or adjudicated at the agency level through the FAA Dispute Resolution Process set forth in 14 C.F.R, Part 17. Judicial review, where available, will be in accordance with 49 U.S.C. §46110 and will apply only to final agency decisions. The decision of the

FAA will be considered a final agency decision only after an offeror or contractor has exhausted its administrative remedies for a protest or a contract dispute under the FAA Dispute Resolution Process.

### **3.9.3 Voluntary Waiver of Protest Revised 1/2017**

Using procedures described herein, the FAA may determine that it is in the Government's best interest to include a voluntary waiver of protest provision or clause into a Screening Information Request (SIR), contract or class of SIRs or contracts. A provision or clause in such SIRs or contracts prohibiting protests is enforceable provided that:

- (a) The Contracting Officer documents the rational basis detailing the factors considered in the determination that prohibiting protests is in the Government's best interest;
- (b) The FAA Acquisition Executive (FAE) approves the written rational basis;
- (c) The FAA Office of Chief Counsel is provided notice of the rational basis; and
- (d) Prior notice is given to the Office of the FAA Administrator that the FAE intends to include a provision or clause that allows for the voluntary waiver protests in a SIR, contract or class of SIRs or contracts.

The use of a no protest provision or clause will only serve to limit protests of orders or contracts placed against an ordering vehicle such as an Indefinite Delivery, Basic Ordering Agreement or other master ordering agreement. Nothing in this section prohibits a challenge to any term or condition of the ordering vehicle made in accordance with the procedures of the FAA Office of Dispute Resolution for Acquisition (ODRA).

### **3.9.4 FAA Dispute Resolution System Revised 1/2017**

The ODRA is established as an organization that is independent of agency organizations responsible for procurement actions. Pursuant to a delegation of authority by the Administrator, the Director of the ODRA manages the FAA dispute resolution process, promotes ADR, conducts dispute resolution proceedings and recommends action to the Administrator on matters concerning protests or contract disputes. The ODRA is authorized, among other things, to

- ☐ Adjudicate protests and contract disputes on behalf of the FAA Administrator;
- ☐ Promulgate rules of procedure;
- ☐ Issue orders and decisions in accordance with delegations of authority from the FAA Administrator;
- ☐ Exercise broad discretion to resolve protests and contract disputes;
- ☐ Use ADR to settle protests and contract disputes; and
- ☐ Provide fair and impartial "Findings and Recommendations", supported by the case record and

law.

- Recommend changes to the FAA acquisition system based on matters brought before the office.

The Director of the ODRA may redelegate to Special Masters and Dispute Resolution Officers (DROs) such delegated authority as is necessary for efficient resolution of an assigned protest or contract dispute, including the imposition of sanctions or other disciplinary actions.

The applicable ODRA rules of procedure are set forth in 14 CFR Parts 14 and 17, Procedures for Protests and Contract Disputes; Amendment of Equal Access to Justice Act Regulations, effective June 28, 1999. These ODRA Rules are incorporated by reference into this section. Further information and guidance concerning the ODRA dispute resolution process for contract disputes and protests can be found on the [ODRA Website](#).

### **3.9.5 Initial Dispute Resolution at the Contracting Officer Level Revised 1/2017**

Offerors and contractors initially should seek resolution of any concerns or controversies at the Contracting Officer level. Contracting Officers should make reasonable efforts to promptly and completely resolve such concerns or controversies, where possible, and will coordinate their dispute resolution efforts with the FAA Procurement Legal Division or their regional or center Assistant Chief Counsel's office. Attempts to resolve disputes at the contracting officer level do not waive or extend the deadlines set forth in 14 CFR Part 17 for filing at the ODRA.

### **3.9.6 Dispute Resolution at the ODRA Revised 1/2017**

ADR is the primary means of dispute resolution that is employed by the ODRA. Upon request, the Office of Dispute Resolution for Acquisition will make available FAA DROs or appropriately qualified persons from outside the FAA to serve as neutrals in ADR proceedings involving protests and contract disputes. The parties may also employ a neutral of their own choosing. With the agreement of the interested parties, the ODRA may provide ADR services in advance of the filing of a contract dispute or bid protest with the ODRA.

The parties may use any ADR technique proposed by the parties that is deemed by the DRO or neutral to be fair, reasonable, and in the best interest of the parties, including, but not limited to, informal communication, mediation, fact-finding, and binding or nonbinding arbitration. Binding arbitration may be employed only if the protester or contractor and the FAA agree to use this method to resolve the merits of the protest or contract dispute. If binding arbitration is agreed to, the decision of the DRO or neutral arbiter will become a final agency decision. If the parties have not agreed to binding arbitration and are unable otherwise to reach an agreement on the merits of the protest or contract dispute through ADR, then the ODRA will adjudicate the matter to a final Agency decision.

### **3.9.7 Obligation to Continue Performance**

The FAA requires continued performance with respect to contract disputes arising under or related to a contract, in accordance with the provisions of the contract, pending resolution of the contract dispute.

### **3.9.8 Matters Not Subject to Protest Revised 1/2017**

The following matters may not be protested before the Office of Dispute Resolution for Acquisition:

- (a) FAA purchases from or through, state, local, and tribal governments and public authorities;
- (b) FAA purchases from or through other federal agencies;
- (c) Grants;
- (d) Cooperative agreements;
- (e) FAA transactions placed against an ordering vehicle containing a voluntary waiver of protest clause pursuant to paragraph 3.9.3 Voluntary Waiver of Protest; or
- (f) Other transactions that do not fall into the category of procurement contracts subject to the AMS.

### **3.9.9 Confidentiality of the ADR Process**

Settlement discussions and documentation provided to facilitate settlement of the issues will be protected and confidential, to the extent provided by law, ADR agreements and ODRA Protective Orders.

## **3.10 Contract Administration**

### **3.10.1 Contract Administration**

#### **3.10.1.1 Applicability**

The types of activities included in the contract administration phase are:

- ☐ Issuing contract modifications;
- ☐ Monitoring contract deliverables;
- ☐ Assuring that subcontracting policies and requirements are followed; and
- ☐ Reviewing the contractor's invoices for payment.

- Closing completed contracts.

### **3.10.1.2 Policy**

The terms and conditions of the contract will be the guidance in performing these tasks.

## **3.10.2 Subcontracting Policies**

### **3.10.2.1 Applicability**

This applies to contracts with the exception of real property and utilities, where a prime contractor may need to subcontract a portion of the work.

### **3.10.2.2 Policy**

The CO must consider requiring "Consent to Subcontracts" when the subcontract work is complex, the dollar value is substantial, or the Government's interest is not adequately protected by competition and the type of prime contract or subcontract.

The CO must consider conducting a Contractor Purchasing System Review for each contractor whose sales to the Government, using other than simplified purchases procedures, are expected to exceed \$10 million during the next 12 months.

To the maximum extent practicable, the contractor must incorporate, and require its subcontractors at all tiers to incorporate commercial items or non-developmental items as components of items to be supplied under contract.

## **3.10.3 Government Property Revised 1/2015**

### **3.10.3.1 Applicability Revised 10/2018**

(a) This part prescribes policies and procedures for providing Government property to contractors; contractors' management and use of Government property; and reporting, redistributing, and disposing of contractor inventory.

(b) It does not apply to—

(1) Government property provided under any statutory leasing authority, except as to non-Government use of property;

(2) Property to which the Government has acquired a lien or title solely because of partial,



advance, progress, or performance based payments;

(3) Disposal of real property;

(4) Software and intellectual property; or

(5) Government property that is incidental to the place of performance, when the contract requires contractor personnel to be located on a Government site or installation, and when the property used by the contractor within the location remains accountable to the Government.

Items considered to be incidental to the place of performance include, for example, office space, desks, chairs, telephones, computers, and fax machines.

### **3.10.3.2 Policy Revised 10/2018**

(a) Contractors are ordinarily required to furnish all property necessary to perform Government contracts.

(b) Contracting officers will provide property to contractors only when it is clearly demonstrated—

(1) To be in the Government's best interest;

(2) That the overall benefit to the acquisition significantly outweighs the increased cost of administration, including ultimate property disposal;

(3) That providing the property does not substantially increase the Government's assumption of risk; and

(4) That Government requirements cannot otherwise be met.

(c) The contractor's inability or unwillingness to supply its own resources is not sufficient reason for the furnishing or acquisition of property.

(d) *Exception.* Property provided under contracts for repair, maintenance, overhaul or modification is not subject to the requirements of paragraph (b) of this section.

(e) Government property, other than foundations and similar improvements necessary for installing special tooling, special test equipment or equipment, will not be installed or constructed on contractor-owned real property in such fashion as to become nonseverable, unless the Head of the Contracting Activity determines that such installation or construction is necessary and in the Government's interest.

### **3.10.3.2.1 General. Added 10/2018**

(a) Contracting Officers will—

(1) Allow and encourage contractors to use voluntary consensus standards and industry-leading

practices and standards to manage Government property in their possession;

(2) Eliminate to the maximum practical extent any competitive advantage a prospective contractor may have by using Government property;

(3) Ensure maximum practical reutilization of contractor inventory for government purposes;

(4) Require contractors to use Government property already in their possession to the maximum extent practical in performing Government contracts;

(5) Charge appropriate rentals when the property is authorized for use on other than a rent-free basis; and

(6) Require contractors to justify retaining Government property not needed for contract performance and to declare property as excess when no longer needed for contract performance.

(b) The FAA will not generally require to establish property management systems that are separate from a contractor's established procedures, practices, and systems used to account for and manage contractor-owned property.

#### **3.10.3.2.2 Responsibility and Liability for Government Property Added 10/2018**

(a) Generally, contractors are not held liable for loss of Government property under the following types of contracts:

(1) Cost-reimbursement contracts;

(2) Time-and-material contracts;

(3) Labor-hour contracts; and

(4) Fixed-price contracts awarded on the basis of submission of certified cost or pricing data.

(b) The contracting officer may revoke the Government's assumption of risk when the property administrator determines that the contractor's property management practices are noncompliant with contract requirements.

(c) A prime contractor that provides Government property to a subcontractor will not be relieved of any responsibility to the Government that the prime contractor may have under the terms of the prime contract.

(d) With respect to loss of Government property, the contracting officer, in consultation with the property administrator, will determine—

(1) The extent, if any, of contractor liability based upon the amount of damages corresponding to the associated property loss; and

(2) The appropriate form and method of Government recovery (may include repair, replacement or other restitution).

#### **3.10.3.2.3 Contractors' Property Management System Compliance Added 10/2018**

(a) The contract property administrator will conduct an analysis of the contractor's property management policies, procedures, practices, and systems. This analysis will be accomplished as frequently as conditions warrant, in accordance with FAA procedures.

(b) The property administrator will notify the contractor in writing when the contractor's property management system does not comply with contractual requirements, will request prompt correction of deficiencies, and will request from the contractor a corrective action plan, including a schedule for correction of the deficiencies. If the contractor does not correct the deficiencies in accordance with the schedule, the contracting officer will notify the contractor, in writing, that failure to take the required corrective action(s) may result in—

- (1) Revocation of the Government's assumption of risk for loss of Government property; and/or
- (2) The exercise of other rights or remedies available to the contracting officer.

(c) If the contractor fails to take the required corrective action(s) in response to the notification provided by the contracting officer in accordance with paragraph (b) of this section, the contracting officer will notify the contractor in writing of any Government decision to apply the remedies described in paragraphs (b)(1) and (b)(2) of this section.

(d) When the property administrator determines that a reported case of loss of Government property is a risk assumed by the Government, the property administrator will notify the contractor in writing that it is granted relief of stewardship responsibility and liability. Where the property administrator determines that the risk of loss of Government property is not assumed by the Government, the property administrator will request that the contracting officer hold the contractor responsible and liable.

#### **3.10.3.2.4 Transferring Accountability Added 10/2018**

Government property will be transferred from one contract to another only when firm requirements exist under the gaining contract (see 3.10.3.2). Such transfers will be documented by modifications to both gaining and losing contracts. Once transferred, all property will be considered Government-furnished property to the gaining contract. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the contractor as contractor-acquired property that is subsequently transferred to another contract with the same contractor.

### **3.10.4 Quality Assurance**

#### **3.10.4.1 Applicability**

Quality Assurance policy and guidelines are applicable to all acquisitions for systems, equipment, material, and services.

#### **3.10.4.2 Policy Revised 10/2011**

For all acquisitions, FAA will:

- ☐ Ensure appropriate quality assurance requirements are included;
- ☐ Require contractors to act on contractual quality assurance commitments;
- ☐ Ensure Government quality and reliability needs are met; and
- ☐ Accept only products that meet agreed to requirements.

Additionally, for NAS system acquisitions:

- ☐ Require the contractor to report the status of requirements linked to critical performance requirements at specified regular intervals;
- ☐ Coordinate with the Quality Assurance Office to ensure appropriate quality assurance requirements are incorporated; and
- ☐ Delegate in-plant quality assurance and acceptance authority to the Quality Reliability Officer or other Government agent.

### **3.10.5 Product Improvement/Technology Enhancement**

#### **3.10.5.1 Applicability**

Product Improvement/Technology Enhancement guidance and procedures apply to all FAA procurements, agreements, real property, utilities, and commercial and simplified purchase method.

#### **3.10.5.2 Policy**

The FAA encourages contractors to submit Product Improvement/Technology Enhancement proposals for review at any time during the performance of a contract. The ability to continuously exchange, upgrade, modify, or add new features to equipment and software in response to increased air traffic activity and/or new advancements in technology and methodology is essential. Contractor proposals which are particularly innovative and address savings for the FAA may be given appropriate consideration in the negotiation.

### **3.10.6 Termination of Contracts**

### **3.10.6.1 Applicability**

This section applies to all FAA contracts, with the exception of real property and utilities.

### **3.10.6.2 Policy**

The termination clauses or other contract clauses authorize contracting officers to terminate contracts for convenience, or for default, and to enter into settlement agreements.

The CO must terminate contracts, whether for default or convenience, when it is in the FAA's interest. The CO may effect a no-cost settlement instead of issuing a termination when (1) it is known that the contractor will accept one, (2) Government property was not furnished, and (3) there are no outstanding payments, debts due the Government, or other contractor obligations.

When the price of the undelivered balance is less than the cost of effecting a termination, the contract should not normally be terminated for convenience but should be permitted to run to completion.

## **3.10.7 Extraordinary Contractual Actions**

### **3.10.7.1 Applicability**

This section is applicable when the FAA intends to enter into, amend, or modify contracts in order to facilitate the national defense under the extraordinary emergency authority granted by Public Law 85-804 (referred to in this section as the "Act") as amended, and Executive Order 10789 (referred to in this section as the "Executive Order").

### **3.10.7.2 Policy**

The FAA may authorize extraordinary contract relief pursuant to Public Law 85-804. Authority to provide such relief is retained by the DOT Secretary for indemnification requests, and by the FAA Administrator or designee for all other requests.

## **3.10.8 First Article Approval and Testing**

First article testing and approval involves evaluating a contractor's initial, preproduction, or sample model or lot. FAA may utilize first article testing and approval to ensure that a contractor can furnish a product that conforms to all contract requirements for acceptance.

## **3.10.9 Closeout of Completed Contracts**

The CO must close physically complete contracts and agreements in accordance with FAST Procurement Guidance. Closeout activities must include completion and signing of the Contract Closeout Checklist and a Contract Completion Statement.

### **3.11 Transportation**

#### **3.11.1 Applicability**

Transportation guidance and procedures are applicable to all contracts in applying contract transportation and traffic management considerations in the acquisition of products, acquisition of transportation and transportation-related services, and transportation assistance with traffic management. The making and administration of contracts under which payments are made from Government funds for (1) the transportation of products, (2) transportation-related services, (3) transportation of contractor personnel and their personal belongings, and (4) acquiring transportation or transportation-related services by contract methods other than bills of lading, transportation requests, transportation warrants, and similar transportation forms.

#### **3.11.2 Policy**

The CO must ensure that instructions to contractors result in the most efficient and economical use of carrier services and equipment through transportation and traffic management administration. The contract office must obtain traffic management advice and assistance in the consideration of transportation factors required for:

- ☐ SIRs and awards;
- ☐ Contract administration, modification, and termination;
- ☐ Transportation of property by the Government to and from the contractor; and
- ☐ Plants.

### **3.12 Reserved**

### **3.13 Other Administrative Matters**

#### **3.13.1 Applicability**

This section is applicable to all screening information requests and contracts.

##### **3.13.1.1 Plain Language Added 7/2006**

When the statement of work for a contract requires the contractor to deliver any document that will be published, either electronically or in hard copy, for dissemination outside the FAA, or for broad dissemination within the FAA, the document must comply with FAA Order 1000.36, "FAA Writing

Standards."

### **3.13.2 Policy**

#### **3.13.2.1 AMS Contract Clauses and Provisions Revised 10/2018**

AMS clauses and provisions used in screening information requests and contracts must be consistent with the procurement guidance and clause prescriptions, unless there is an approved rational basis for adopting a different approach. The Chief Counsel's office and Chief of the Contracting Office must approve in advance each such rational basis determination regarding the use or tailoring of a mandatory clause or provision.

#### **3.13.2.2 Reserved**

##### **3.13.2.2.1 Reserved**

##### **3.13.2.2.2 Reserved**

#### **3.13.3 Reserved Revised 7/2013**

#### **3.13.4 Contract Data Reporting**

The FAA will comply with the uniform reporting requirements of the Federal Procurement Data System.

#### **3.13.5 Congressional Notification of Contract Awards**

Through the Department of Transportation's Assistant Secretary for Governmental Affairs, the FAA will notify Congress of contract awards and contract modifications.

#### **3.13.6 Seat Belt Use by Contractor Employees**

The FAA will comply with the requirements of Executive Order 13043 entitled "Increasing Seat Belt Use in the U.S.".

### **3.14 Security**

#### **3.14.1 Applicability**

This section is applicable to all screening information requests and contracts.

### **3.14.2 Policy**

#### **3.14.2.1 Contractor Personnel Security Program Revised 10/2018**

The acquisition community must ensure an adequate level of security for contractor employees as stated in FAA Order 1600.72A, allowing for compliance with OMB Circular A-130, "Management of Federal Information Resources", Executive Order 12829 "National Industrial Security Program", and DOD Directives 5200.2 and 5220.22M.

All FAA employees and contractor and subcontractor employees are subject to the FAA's Insider Threat Detection and Mitigation Program (ITDMP) provided they meet the definition of an "FAA employee" and fall within the scope of the program as defined in FAA Order 1600.82. For more information on this Program, please see [https://www.faa.gov/regulations\\_policies/orders\\_notices/](https://www.faa.gov/regulations_policies/orders_notices/) (FAA only).

##### **3.14.2.1.1 Employment Suitability Revised 10/2007**

Contractor employees (including contractors, subcontractors, or consultants) must be subject to the same investigative and personal identification verification requirements as Federal employees if in similar positions requiring recurring access to FAA facilities or access to FAA information systems or sensitive information.

#### **3.14.3 Classified Information Revised 7/2007**

The CO will ensure that all proposed and awarded procurement actions contain appropriate provisions and clauses if access to classified information is required, in accordance with The National Industrial Security Program Operating Manual, DOD 5220.22-M and FAA Order 1600.72A, Contractor and Industrial Security Program.

#### **3.14.4 Sensitive Unclassified Information**

The CO, in coordination with the service organization, will ensure that all contractual actions contain provisions and clauses to protect the unauthorized dissemination of FAA sensitive information. Such information may entail Sensitive Unclassified Information (SUI), For Official Use Only (FOUO), Sensitive Security Information (SSI), or any other designator assigned by the US Government to identify unclassified information that may be withheld from public release. The Freedom of Information Act (FOIA) provides in exemptions 2 through 9, the guidelines for withholding sensitive unclassified information from the public and how such information must be protected from unauthorized disclosure. Section 552a of Title 5, United States Code (the Privacy Act) identifies information, which if subject to unauthorized access, modification, loss, or misuse could adversely affect the national interest, the conduct of Federal programs or the privacy to which individuals are entitled.



### **3.14.5 Facility Security Program Revised 1/2019**

The Facility Security Risk Management process, as developed through the FAA's Facility Security Management Program, FAA Order 1600.69C, must be an integral part of program concept, planning, engineering design, and the implementation of required protective measures maintained throughout the lifecycle for physical security enhancements.

### **3.14.6 Information Security and Privacy (IS &P) Revised 10/2018**

The Federal Information Security Modernization Act, 2014 (FISMA), OMB Circular A-130, and other federal standards and regulations describe information security for all agency information that is collected, stored, processed, disseminated, or transmitted using agency or non-agency owned information systems. For additional FAA IS &P Program policy, see FAA Order 1370.121 at [https://www.faa.gov/regulations\\_policies/orders\\_notices/](https://www.faa.gov/regulations_policies/orders_notices/) (FAA only). The contractor must comply with all applicable policies as indicated in the Statement of Work/Specification.

Regarding possible security breaches, in accordance with OMB Memorandum 07-16, when the breach involves a Federal contractor or a public-private partnership operating a system of records on behalf of the agency, the agency is responsible for ensuring any notification and corrective actions are taken.

FAA will notify and consult with the United States Computer Readiness Support Team (US-CERT) regarding information security incidents involving the information and information systems that support the operations and assets of the FAA, including contractor systems that support the FAA.

Offerors must indicate in responding to SIRs for Information Technology (IT) or services in support of IT whether they will be using an international processing hub or exchange for FAA data or information, or if any subcontractors or third parties more than 50% foreign owned will be processing, storing, or backing up the data and information.

Protection of privacy is applicable to all FAA procurements including agreements, real property, utilities, credit cards, commercial and simplified purchase method. When the FAA contracts for the design, development, and/or operation of a system of records on individuals, the FAA will apply the requirements of the Privacy Act to the contractor and its employees working on the contract.

## Section Revised:

### 4.2.3.3.2.4 Security

### 4.11 Security

## Acquisition Management Policy - (~~10/2018~~ 1/2019)

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### 4 Policy for Critical Lifecycle Management Functions and Disciplines Revised 1/2012

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###### 4.2.3.3.2.2 No-Cost Land on Airport Memorandum of Agreement Added 1/2008

- 4.2.3.3.2.3 Rural Development Act Requirements Added 1/2008
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- 4.2.3.3.2.6 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR Part 24) Added 1/2008
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  - 4.2.3.14.1 Disclosure of Information Added 1/2008
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  - 4.2.3.14.3 Organizational Conflicts of Interest Added 1/2008
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- [4.3.3.5 In-Service Management](#) Revised 10/2007
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    - [4.5 Independent Operational Assessment](#) Revised 4/2018
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## **4 Policy for Critical Lifecycle Management Functions and Disciplines Revised 1/2012**

Sound acquisition management requires that service organizations integrate and manage many critical functions and disciplines working to the common purpose of fielding high-quality, trouble-free products and services. These disciplines vary, depending on the type of investment program, but typically include configuration management, real property, integrated logistics support, test and evaluation, independent operational assessment, deployment planning, human factors, environmental, occupational safety and health, and energy considerations, information technology, systems engineering, security, system safety management, risk management, and data standardization. The following specific policy requirements apply to these functional disciplines. FAST contains additional guidance.

### **4.1 Configuration Management**

#### **4.1.1 Scope Revised 1/2008**

Configuration management applies to all systems, sub-systems, equipment, components, and assets captured in the FAA Enterprise Architecture. This includes all NAS and Mission Support information technology hardware, software, firmware, documentation, interfaces, standards, test and support equipment, facility space, spares, training and courseware, and manuals. Configuration management begins with the baselining of requirements documentation and ends with decommissioning of physical assets or the termination of services. Before introducing new equipment or software, the responsible solution provider must prepare a change proposal and have it approved by the appropriate configuration control board. This is required for expenditure of both operations and facilities and equipment funding. Configuration management of FAA systems and equipment complies with all agency safety and security requirements. Detailed lifecycle configuration management policy and procedures are in [FAA Order 1800.66](#).

##### **4.1.1.1 Configuration Identification**

Service organizations, regions, and other solution providers must identify configuration items and must develop appropriate configuration documentation to define each configuration item. This activity includes the development of a product top-down structure that summarizes the total units and configuration documentation for the system or configuration item, and the assignment of unique identifiers, which identify units, and groups of units, in a product. Configuration identification and product information must be maintained and readily available to all FAA decision-makers. Baselined documentation must be provided to the appropriate program, service organization, or national program support library, and must be maintained with all necessary links to the CM information management system. To ensure configuration management information is available to all decision-makers and CM practitioners in the FAA community, the central configuration management authority must be responsible for providing the necessary facilities and electronic tools to document, monitor, and CM information in the NAS.

#### **4.1.1.2 Configuration Status Accounting**

Service organizations, regions, and other solution providers must develop and maintain configuration information for their configuration items or products in a systematic and disciplined manner in accordance with this policy and national configuration management process and procedures. Status accounting information includes developing and maintaining site configuration data, and the incorporation of modification data on systems and configuration items. This configuration information must be available for use by decision-makers over the lifecycle of the product.

#### **4.1.1.3 Configuration Control Boards**

A configuration control board with an approved charter and operating procedures will be the official FAA-wide forum used to establish configuration management baselines and to approve / disapprove subsequent changes to those baselines. Proposed changes to configuration management baselines must be submitted to the appropriate configuration control board on the FAA-approved case file - NAS Change Proposal (NCP) form. A configuration control board must document its approval / disapproval decision on the FAA-approved configuration control decision form.

#### **4.1.1.4 Commercial Off-The-Shelf, Non-Developmental Items, and Commercially Available Software**

After FAA acceptance, Commercial Off-The-Shelf (COTS), Non-Developmental Items (NDI), and Commercially Available Software (CAS) systems must be maintained under configuration control. This control must entail the management of a performance specification, and a data package, if available. Control will require the establishment and maintenance of records indicating the version of COTS / NDI / CAS at specific locations. When identifying COTS as a proposed solution, Service organizations and other solution providers must analyze and consider the impacts of vendor modification of COTS / NDI / CAS products during vendor production and routine vendor maintenance. Appropriate constraints and notification requirements of vendor changes must be incorporated into purchase agreements to enable management of product changes to the maximum extent possible.

#### **4.1.2 Application Revised 1/2008**

A configuration control board with an approved charter and operating procedure is the official agency-wide forum for establishing configuration management baselines and approving or disapproving changes to those baselines. Configuration control board charters and operating procedures record board membership and the programs and configuration items managed by the board. Proposed changes and associated decisions to configuration management baselines are submitted to the appropriate configuration control board on the appropriate agency-approved form.

#### **4.1.3 Structure and Responsibilities Revised 11/2009**

FAA configuration management has an enterprise-wide, multi-layer structure with each layer managing an increasing level of detail. The specific responsibilities of each layer are as follows:

**FAA Configuration Management Authority:**

- ☐ Coordinates the development and establishment of FAA configuration management policy, processes, and guidance;
- ☐ Assists lines of business, staff offices, service organizations, service areas, and other solution providers with development of CCB charters and operating procedures;
- ☐ Provides training, facilities, and electronic tools to document, monitor, and report configuration management information;
- ☐ Maintains a mechanism for assigning hardware names, asset tags, and identifiers for systems, interface documentation, and system documentation;
- ☐ Make accessible the NAS-MD-001, NAS Master Configuration Index Subsystem Baseline Configuration and Documentation Listing, using data available from the CM information management system. All configuration control boards follow the direction of the FAA Configuration Management Authority regarding the type, content, and availability of information in the information management system to ensure validity of data in NAS-MD-001.

A cross-functional team comprised of senior managers advises the Configuration Management Authority, serves as forum for addressing and resolving issues, and assists in the implementation of configuration management policy and solutions.

**NAS Configuration Control Board:**

- ☐ Controls changes to NAS systems and associated documentation not assigned to a lower-level CCB or not identified for control by the Joint Resources Council;
- ☐ Baselines Interface Requirements Documents and controls non-FAA or non-baseline system interfaces to the NAS;
- ☐ Approves service organization, service area, and other solution provider CCB charters and updates;
- ☐ Resolves problems regarding NAS system requirements among service organizations or other solution providers;
- ☐ Approves changes to NAS technical documentation and ensures traceability of requirements from the NAS level to the system and subsystem level;
- ☐ Manages changes to the final program requirements document, and notifies the investment decision authority if those changes affect cost, schedule, or performance.

**Service Organization Configuration Control Boards:**

- ☐ Approve or disapprove proposed changes to configuration items under their purview for the lifecycle of the configuration item;
- ☐ Ensure all changes have been fully analyzed and coordinated with all organizations affected by the change;

- ☐ Refer to the NAS Configuration Control Board proposed changes that exceed their approval authority;
- ☐ Establish functional, allocated, product, and operational baselines for all NAS systems;
- ☐ Manage the site configurations of FAA facilities in accordance with FAA-STD-058, FAA Standard Facility Configuration.

Service-Area Configuration Control Boards:

- ☐ Control changes to facility equipment layout drawings, critical power panel designations, and unique regional equipment, as identified in their charters;
- ☐ Regularly validate the accuracy of baselined facility space and power panel documentation.

The service-area configuration management plan identifies the facilities that are subject to verification and audit and specifies the audit interval. The plan also documents the configuration management program, including the methodology and processes used to accomplish service-area configuration management tasks.

Mission Support Information Technology Configuration Control Board:

- ☐ Manages Mission Support information technology systems and associated documentation not assigned to a lower-level CCB or not identified for control by the Joint Resources Council except for data exchange standards;
- ☐ Baselines Interface Requirements Documents to Mission Support systems;
- ☐ Approves line of business staff office and other solution provider CCB charters and updates;
- ☐ Approves changes to Mission Support information technology technical documentation and ensures the traceability of requirements;
- ☐ Baselines the final program requirements document or specification.

Mission Support Line of Business Staff Office or Solution Provider Configuration Control Boards:

- ☐ Approve or disapprove proposed changes to configuration items under their purview for the lifecycle of the items;
- ☐ Ensures all changes are fully analyzed and coordinated with all organizations affected by the change;
- ☐ Refers changes to the Mission Support IT CCB proposed changes that exceed their approval authority;
- ☐ Establish functional, allocated, product and operational baselines for all Mission Support systems. This includes establishing and documenting site configurations, including as-built equipment layout drawings and critical power panel designations, and creating baseline documentation for FAA information technology facilities.

NAS and Mission Support Information Technology Acquisition-Level Configuration Management:

Service organizations, LOB staff offices, and other solution providers charged with providing solutions to Enterprise Architecture requirements do the following:



- Establish, implement, and maintain configuration management plan(s) that document the configuration management program, including the methodology and processes used to accomplish configuration management tasks;
- Include requirements for configuration management planning, process, procedures and products in all acquisition contracts;
- Document transition plans and activities for field organizations; and
- Manage the lifecycle of configuration items and associated baseline documentation, which may include training material, courseware, and logistics support documentation assigned to them.

#### 4.1.4 Activities **Revised 11/2009**

FAA lines of business, staff offices, service organizations, service areas, and other solution providers develop the infrastructure, processes, and documentation necessary to conduct the following configuration management activities:

**Planning and Management:** Plan, coordinate, document, and manage all tasks necessary to manage the configuration of assigned enterprise architecture products throughout all phases of the lifecycle management process. A configuration management plan formalizes processes and procedures and roles and responsibilities, and ensures continuity of configuration management practices at all levels of management.

**Configuration Identification:** Identify the configuration items of the total product and develop documentation to define each. This activity includes development of a top-down configuration management structure for the product, and the assignment of unique identifiers for the units and groups of units in the product. Configuration identification and product information is maintained and be readily available to all FAA decision-makers.

**Baseline Management:** Establish and maintain a configuration baseline that represents technical aspects of approved product requirements. Baselined documentation is maintained by the appropriate line of business program office, staff office, or service organization, and is accessible in a secure environment through the program support library.

**Configuration Change Management:** Identify, document, coordinate, evaluate, and adjudicate proposed changes to a configuration baseline. Approved changes are documented, implemented, verified, and tracked to ensure incorporation into all impacted assets and their support infrastructure.

**Configuration Status Accounting:** Capture, store, and access the configuration information needed to manage products and product information. Configuration information must be electronically available for use by decision-makers over the lifecycle of the asset.

**Configuration Verification and Audit:** Periodically audit operational products to ensure consistency between the product and its baseline documentation. This activity includes verification of facility baselines, the incorporation of approved modifications, and product audits after commissioning.

Information/Data Management: Manage configuration data and information according to requirements in FAA Order 1375.1, Information/Data Management Policy.

#### **4.1.5 Commercial Off-The-Shelf, Non-Developmental Items, and Commercially Available Software Revised 1/2008**

Commercial off-the-shelf, non-developmental items, and commercially available software are maintained under configuration control after acceptance into use by the FAA. This control requires management of the performance specification and data package, if available, and the establishment and maintenance of records indicating the version at specific locations. When identifying COTS as a proposed solution, FAA lines of business, staff offices, service organizations, and other solution providers must analyze and consider the impact of vendor modification of products throughout the intended service life. Appropriate constraints and notification requirements of vendor changes must be incorporated into purchase and maintenance agreements.

#### **4.1.6 Local Changes Added 1/2008**

Local changes affecting in-service baselined systems must be evaluated by the appropriate line of business, staff office, or service organization and can be authorized only by the responsible configuration control board.

#### **4.1.7 Operational Configuration Management Policy Added 1/2008**

AMS configuration management policy applies to all operational assets. Detailed operational NAS configuration management policy is in Order 1800.66, paragraph III-4. Detailed operational Mission Support IT configuration management policy is in paragraph III-4.

#### **4.1.8 Mission Support IT CM for Enterprise Data Centers and Other IT Facilities Added 1/2008**

Line of business/staff office configuration management personnel validate, on a regular basis, baselined facility space and power panel documentation for accuracy. The line of business/staff office configuration management plan identifies the baselined facilities subject to verification and audit and specifies the audit interval. The plan also documents the configuration management program, including the methodology and processes used to accomplish IT facility configuration management tasks.

### **4.2 Real Property**

#### **4.2.1 Applicability Revised 1/2008**

This policy applies to the acquisition, management, and disposal of real property interests by lease, purchase, condemnation, or otherwise, as well as services related to such acquisition, management, and disposal, other related services, and utilities. This policy codifies the authority for real property transactions by FAA; however, it must be read in conjunction with Procurement Policy 3.0. In the event of a conflict between these provisions and Procurement Policy 3.0, these provisions will govern. Roles and responsibilities in real property transactions, and definitions of real property terms are found in Appendix 1 of this Chapter. For clarification of real property terms and to obtain real property information not found in this Chapter, contact ALO-200.

#### **4.2.2 Guiding Principles Revised 1/2012**

The acquisition of real property interests differs from other procurement types in important ways. For example, FAA's need for a specific site, location, or other mission-driven requirement, may limit the alternatives available for consideration in the real property acquisition process. FAA's primary goal is to acquire necessary real property interests to meet mission requirements. FAA is committed to meet applicable sustainability acquisition and management requirements, to the extent practicable. To that end, FAA must be a good steward of the real property interests/assets acquired for the mission throughout the asset lifecycle, including the acquisition process, in-service management of the asset, and disposal or other final disposition of the asset/interest. The acquisition process requires sound business judgment and a competent and professional staff having the highest integrity, with authority delegated to the lowest responsible level. In addition to the Guiding Principles provided in Acquisition Management System Policy Section 3.1.3, Fundamental Principles, the FAA real property guiding principles will:

- ☐ Enable the selection of the lessor with the best value to satisfy FAA's mission;
- ☐ Focus on timely, cost efficient, and quality contract performance;
- ☐ Promote discretion, sound business judgment, and flexibility at the lowest levels while maintaining fairness and integrity;
- ☐ Provide streamlined methods and initiate innovative processes to conduct timely and cost-effective procurements;
- ☐ Promote open communication and access to information throughout the procurement process and encourage use of electronic methods for information exchange;
- ☐ Encourage competition as the preferred method of contracting;
- ☐ Permit single-source contracting when necessary to fulfill the FAA's mission;
- ☐ Allow the use of a range of lease types and transactions best suited to a particular procurement;
- ☐ Provide an internal process for resolving protests and disputes in a timely, cost-effective and flexible manner;
- ☐ Promote high standards of conduct and professional ethics;
- ☐ Require appropriate file documentation to support business decisions;
- ☐ Assure adequate checks and balances;
- ☐ Ensure public trust; and

- Promote and increase sustainable real property acquisition, management and disposal practices throughout the asset lifecycle, to the extent feasible and practicable within the agency mission and budget constraints.

#### **4.2.2.1 Contracting Authority Revised 10/2014**

The FAA Administrator has been given broad statutory acquisition authorities in Title 49 United States Code. Pursuant to the provisions of Title 49, the Administrator is the final authority for carrying out all functions, powers, and duties of the FAA Administration relating to the acquisition and maintenance of property and equipment. The Administrator has broad authority "to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the Administration . . .with any Federal agency, or any instrumentality of the United States, any territory, or possession, or political subdivision thereof, any other governmental entity, or any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate." (49 U.S.C. 106(l)(6).) In addition, the Administrator has the authority to enter into leases that require the use of appropriated funds for terms of up to 20 years. (49 U.S.C. 40110.)

The FAA Administrator may establish contracting activities and delegate to the Acquisition Executive broad authority to manage FAA contracting functions. The Acquisition Executive is authorized to appoint Chiefs of the Contracting Office (COCOs) and redelegate the contracting authority to them. The COCO may redelegate the contracting authority to individuals within their management area who have met the training requirements of the AMS and have demonstrated the appropriate knowledge and experience needed to execute this authority on behalf of the Government. Those who have been delegated contracting authority include procurement and real estate contracting officers (RECOs), logistics management specialists, and managers of the purchase card program.

The delegation of contracting authority to the RECOs, like that to COs and other qualified persons is by written warrant or other certificate of appointment. Contracts, leases, agreements, grants and other transactions may be entered into and signed on behalf of the FAA only by RECOs with a written certificate of appointment. The certificate of appointment or RECOs warrant must expressly state the types of transactions authorized by the delegation, and any limitation to the authority granted. If the authority is not specified in the warrant or certificate of appointment, that authority does not exist. The delegated authority of individual employees below the COCO is not transferable. For further information, please see "Warrant Levels for RECOs." Information on the limits of the contracting officer's authority must be readily available to the public and FAA personnel.

The RECO must have warrant authority commensurate with the total estimated potential value (see 6.0 Training, in Real Estate Guidance) of a transaction. Modifications after the original award are considered standalone actions when calculating the total estimated potential value; therefore, a Contracting Officer's warrant needs to have a dollar limitation sufficient to award the total of a modification, but not the entire value of the contract, order, lease or agreement.

Key contracting duties and responsibilities for fund certification, are to be separated among individual people. For a particular requirement, the same person must not requisition, certify funds availability, approve, and obligate funds.

Acquiring real property interests and utilities is a time-consuming process, and involvement of the Real Estate Contracting Office (RECO) at the earliest opportunity will expedite the procurement. Such early involvement will allow for needed planning and coordination, and will ensure that all applicable statutory and regulatory requirements are met and the acquisition is completed in sufficient time to meet the FAA's needs.

#### **4.2.2.2 Real Property Definition Added 10/2008**

Real property is defined in Appendix C of AMS policy.

#### **4.2.3 Policy Revised 1/2008**

The procurement process is to be conducted following best commercial business practices, in a fair and equitable manner. Real property interests, related services, and utilities will be acquired by the competitive method whenever practical and reasonable. All real estate transactions (acquisition, management and disposal) will comply with all Federal statutes, Executive Orders, Federal regulations, FAA Orders and the Acquisition Management System (AMS). If there is a conflict between the AMS and FAA Orders, the AMS provisions will govern.

##### **4.2.3.1 Legal Coordination of Real Property Actions Revised 7/2016**

Certain real property actions will be reviewed in accordance with the legal coordination policy set forth in 1.2.14 of AMS policy and Real Property Guidance Section 7.0. Legal coordination is required for: 1) all non-competitive acquisitions of real property having a total value exceeding \$10,000; or 2) all competitive real property acquisitions, including, but not limited to, new or succeeding leases, lease renewals, and lease modifications having a total value over \$100,000; 3) all condemnations, purchases and disposals of interests in real property; and 4) all additions and revisions, other than those revisions to correct typographical errors, to the published real property document provisions/clauses.

##### **4.2.3.2 Request Revised 1/2008**

The acquisition process may start with an informal request; however, prior to issuance of a Solicitation For Offer or proposed Lease contract, a signed request from the using service/requiring office must be received. If rental or other costs are involved in the acquisition, a certification of funding must be received prior to any obligation of funds or award of a lease/contract. One document may serve as both the request and the funding certification.

#### 4.2.3.3 Requirements Revised 1/2012

Real property requirements must be fulfilled by a competitive process whenever practicable and in the best interest of the FAA. The RECO and the program office requiring the asset will meet as early as possible to do the following: review, clarify and streamline acquisition requirements and determine the options available to 1) ensure that special requirements and alternative solutions, where appropriate, are considered; 2) define the appropriate area of geographic consideration (i.e., delineated area); and 3) ensure that FAA-mandated requirements are met, including incorporating sustainability/environmental/energy principles in the acquisition process, if practicable. The RECO may begin the initial acquisition process with a Purchase Request for any amount, including zero dollars from the using service/requiring office. However, the RECO must not issue any formal requests for information, quotes or Solicitation for Offers (SFO) until the requirements are finalized, any required business case approvals are received and it has been confirmed that certified funds for the current fiscal year are available for obligation. The RECO may provide preliminary market information for purposes of supporting business cases if requested by the requiring office.

##### 4.2.3.3.1 Succeeding Leases/Renewal Leases Revised 7/2012

Prior to determining whether to enter into a succeeding lease (i.e., the lease expires at the end of the term and no renewal option(s) remain), or to renew an existing lease (i.e., the exercise of an option to stay in the existing location), the RECO must consult with the using service/requesting office and obtain a statement of continuing need. Additionally, in the case of space leases, the facility subject to the expiring lease must be in compliance with current life safety, seismic safety, and to the extent practicable high performance sustainable building (HPSB) requirements.

If the agency is considering remaining at the current location, then the current Lessor must be contacted regarding potential upgrades to the real property, to ensure that the space will comply with all requirements contained in the proposed new lease, and that the Lessor is willing to execute the proposed lease. If the Lessor is unable or unwilling to support the necessary improvements, or other changes necessary to meet the FAA's current requirements, then the FAA must either:

1. Relocate to another location, or
2. The Spaceholder's Council may consider mission-related reasons to stay. In this case, the justification to stay must be documented in the project's business case and approved by the appropriate Spaceholder's Council. Alterations, upgrading, and expansion/reduction of requirements must also be considered and included, as appropriate, in the subsequent acquisition and final documentation.

When fulfilling the using service/requesting office requirements, the RECO **must** use the standard land lease, space lease, utilities and outgrant templates and associated forms for all new, succeeding and renewal lease acquisitions.

*In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the lease term have been obligated. Thus, the RECO is authorized to award a lease without having any funds*

*on the date the lease is signed (i.e., the RECO can sign a lease in the current fiscal year, even though rent commencement does not occur until the next fiscal year).*

The RECO must ensure that all clauses incorporated in the succeeding lease agreement are current and applicable. In addition, if the term of a cost lease is less than 20 years, including all renewal options, and if the RECO determines that the best method to fulfill a short-term continuing need is by extending the current lease, the Supplemental Lease Agreement must contain all current clauses. However, if the lease has been effective for over 20 years, the RECO must negotiate a new or succeeding lease.

In addition, all proposed permanent changes to the standard lease clauses must be approved by ALO-200 and AGC-500. The RECO must maintain signed approvals in the lease file.

*Note: Any changes to lease clauses that are to be applied to a single case must be approved by Regional Counsel each time they are proposed.*

#### **4.2.3.3.1.1 Timing of renewal/succeeding lease efforts Added 1/2008**

In order to complete a renewal or succeeding lease transaction prior to the lease expiration date and prevent FAA from becoming a holdover tenant, the RECO must commence the renewal process, or the process of entering into a succeeding lease, at least 18 months prior to the lease expiration date for all FAA direct land and space leases. For all GSA controlled space, the RECO must commence the renewal process at least 24 months prior to the lease expiration date. This 18-month period is a suggested minimum. Each lease transaction should be considered individually by the RECO and the RECO may determine to afford the transaction additional time if the RECO is aware of issues that could jeopardize timely completion of the lease transaction.

#### **4.2.3.3.1.2 Emergency Reservation of Expiring Funds for Continued FAA Occupancy**

**Added 1/2008**

If a continuing need has been determined and it appears the lease will expire without a Supplemental Lease Agreement for a short-term extension, or succeeding lease has not been awarded, then

- ☐ The RECO must notify his manager, regional counsel, and the LOB Budget office of issue.
- ☐ The RECO must continue negotiating an extension via an SLA for continuing payments at the current lease rental rate.
- ☐ If the lessor still refuses to sign a temporary agreement, then the RECO must take steps to ensure that sufficient funds are either reserved, or set aside for settlement of the holdover period. A holdover period should not exceed 6 months.
  - o If extensions go on longer than 6 months or if the lessor wants the FAA to leave the premises, the RECO may be in a condemnation posture. The RECO needs to prepare



the affected LOB and discuss setting aside funds for a potential condemnation. See Real Estate Guidance 1.1.19: Condemnation

- ☐ During the 6 months of continued occupancy past the expiration date, the RECO will continue to negotiate an extension or new lease agreement.
- ☐ However, prior to the end of the current fiscal year, the RECO will notify the affected LOB of the potential need to reserve the minimal funds necessary to pay for the FAA's occupancy during the continued occupancy period, and provide an estimate. If the LOB wishes to reserve funds from the soon to be expiring budget year, they must provide a requisition to the RECO, and the RECO will reserve the estimated rent as an emergency contract. The RECO will send a formal memo to the Accounting office of the emergency reservation of funds, and to await further instructions from the RECO on when to make any payments. Note: The RECO must document in the file a justification for the emergency reservation of funds.
- ☐ If the LOB validates, it can pay the back rent from current year funds, it is not necessary to perform the emergency reservation of funds.
- ☐ Once a final lease agreement is negotiated, the RECO must perform a modification to the emergency lease to document the conversion to a fully executed lease contract. Any difference in lease rental payment should be settled and paid at that time.
- ☐ For additional information please see guidance on hold over tenancy. See Real Estate Guidance 1.1.5.2: Succeeding Leases/Lease Renewals

#### **4.2.3.3.2 Other Requirements to consider Added 1/2008**

##### **4.2.3.3.2.1 Administrative Space Order 4665.4 and GSA-Controlled Space Request Revised 7/2016**

The RECO and the LOB must use the guidelines from the FAA Order 4665.4A Federal Aviation Administration (FAA) Administrative and Technical Space Standards. This order provides standards for the construction, reconfiguration and consolidation of administrative and technical spaces; promotes workforce mobility and workplace flexibility; and improves the Agency's space utilization rate.

This order applies to those responsible for planning, procuring, implementing, maintaining, or occupying administrative and technical spaces in the FAA. It also applies to any other person or entity who has a formal written agreement with the FAA to plan, implement, or maintain FAA space.

##### **4.2.3.3.2.1.1 General Services Administrative (GSA) Space Request Revised 7/2016**

Requesting Line of Business (LOB) office must obtain prior approval for space requests from the ALO-200 Strategic Planning by submitting a documentation for the space which contains the following: a completed SF-81/SF- 81A or a written document with space request, justification/reason for request, complete staffing (workstation patterns, floor plans if available), office space per person, support space, special space by type, number of parking spaces required for government owned vehicles.



For all new, renewal, and lease expiration for General Services Administration (GSA) controlled space, the RECO must notify ALO-200 for prospectus projects at a minimum of 36 months and non-prospectus projects at a minimum of 18 to 24 months, prior to execution of a GSA Occupancy Agreement (OA). Prior to making any commitment to the Regional GSA regarding prospectus level projects, the point of contact (POC) for the National GSA Rent Program must notify ALO-200. Notification must take place at a minimum of 36 to 60 months prior to execution of a GSA OA.

The LOB servicing office must ensure the use of available Government-owned space before leasing or otherwise acquiring space. The LOB office must follow the guidance for "Chief Financial Officer Review of GSA Space Request over \$10 Million" for all GSA-controlled space.

#### **4.2.3.3.2.2 No-Cost Land on Airport Memorandum of Agreement Added 1/2008**

The RECO must use the [No-Cost Land on Airport Memorandum of Agreement](#) for transactions with airport sponsors who receive Airport Improvement Funds. Land for NAVIDS on airports without Airport Grant Assurances (including military airports) will be leased using the standard on airport land lease template. When an airport has received an Airport Grant Assurance requiring it to provide rent free space to the FAA, the RECO must follow Rent-Free Guidance (2.4.5: Appendix E: Rent-Free Guidance) until otherwise notified.

#### **4.2.3.3.2.3 Rural Development Act Requirements Added 1/2008**

The FAA requesting office/using service must give first consideration to rural areas when searching for locations for new space, other facilities (i.e. research and development facilities, warehouses, labs, clinics, etc.), and land acquisitions, unless mission or program requirements call for urban areas. A rural area is defined as a city, town, or unincorporated area that has population of 50,000 inhabitants or less, other than an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants.

#### **4.2.3.3.2.4 Security Added 1/2008 Revised 1/2019**

In developing & finalizing lease requirements, the RECO must coordinate with both the LOB and the Servicing Security Element (SSE) to comply with facility security requirements of FAA Order 1600.69C Facility Security Management Program; and the responsible AXP Office to comply with the personnel requirements of FAA Order 1600.72A, Contractor and Industrial Security Program. ~~and the facility security requirements of FAA Order 1600.69B, Facility Security Management Program.~~ It is the responsibility of the Operating Office in coordination with the SSE and the responsible AXP Office to determine whether lessor employees have a need for frequent and recurrent access that supports the issuance of FAA badges. ~~classify the users, the risk and the accessibility levels of the tasks to be performed and determine whether an FAA badges should be issued to the contractor employees.~~

Prior to executing any lease or lease renewal requiring lessor employees to have unescorted access to FAA systems, information, programs or resources located in the leased space, the LOB must designate

the position risk levels using the Office of Personnel Management's Position Designation Automated Tool available at <https://www.opm.gov/suitability/suitability-executive-agent/position-designation-tool/#url=Automated-Tool>. The LOB must submit the completed Position Designation Records to the responsible AXP office for approval, have a ~~FAA Form 1600-77 Contractor Position Risk/Sensitivity Level Designation Record signed off by the SSE (see FAA Order 1600.72A)~~. If the ~~SSE~~responsible AXP office makes changes to the ~~1600-77 Position Designation Records~~ submitted for their signature, the LOB will accept the changes.

#### **4.2.3.3.2.5 Seismic Safety Revised 10/2014**

It is FAA policy to provide/acquire space that complies with current federal standards for seismic safety. This policy is applicable to all space, whether such space is newly leased space, leased space subject to renewal, the purchase or construction of new buildings, or space undergoing major, renovations, where cost exceeds 50% of replacement value, in existing buildings. This policy is in accordance with the requirements of Executive Order (E.O.) 12699, E.O. 12941 and P.L. 101-614. In existing buildings, FAA follows National Institute of Standards and Technology (NIST) RP-8, [Standards for Seismic Safety for Existing Federally Owned or Leased Buildings, December 2011](#). RP-8 requires a "Seismic Safety Certification" that complies with the requirements of the American Society of Civil Engineers (ASCE) Standard 31-03, *Seismic Evaluation of Existing Buildings*, to be performed by a qualified structural engineer, prior to signing a new lease, renewing an existing lease, or granting rights to locate a privately owned structure on federal property. For new construction, the minimum standard for seismic compliance is the current edition of the International Building Code (IBC). In addition, the construction must be certified by a licensed structural engineer as meeting the requirements of the IBC.

RP-8 Section 1.3 lists exemptions from the seismic compliance requirements, and an exception that may relieve an Agency of the seismic safety certification requirement. However, these exemptions must be applied on a case-by-case basis. Further details on Seismic Safety procedures are found in Real Property Guidance section (2.4.8 Appendix H: Seismic).

#### **4.2.3.3.2.6 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR Part 24) Added 1/2008**

To the extent that it is applicable to FAA real property transactions, FAA RECOs must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (promulgated in 49 CFR Part 24). See [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr24\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr24_main_02.tpl) and [http://www.fhwa.dot.gov/real\\_estate/archives/uafnl99.cfm](http://www.fhwa.dot.gov/real_estate/archives/uafnl99.cfm). Provisions of the Uniform Act are mandatory and are applicable to each Federal agency that administers programs or provides financial assistance for projects, which involve land acquisition or relocation assistance.

#### **4.2.3.3.2.7 Vehicle Policy Added 1/2008**

To the extent that parking space is available and affordable, it is the policy of the FAA to provide adequate parking for official Government vehicles and adequate free parking for employee vehicles at all FAA-owned and leased facilities. In order to promote fuel conservation, reduce traffic congestion, reduce demand for parking spaces and reduce air pollution, the FAA will make available as many parking spaces as possible for the use of vanpools/carpools. For more information please see vehicle guidance (2.4.2 Appendix B Vehicle Parking Guidance).

#### **4.2.3.3.2.8 Environmental / Sustainability / Energy Considerations Revised 7/2016**

The FAA supports, to the extent financially feasible and allowable by its mission, all environmental, energy savings and sustainability laws, regulations, and orders applicable to environmental/energy/sustainable areas. The RECO must follow the requirements as outlined below and in the corresponding provisions in the Real Estate Guidance. FAA SOs/LOBs must use an ISO 14001 Environmental Management System (EMS) to manage their environmental aspects, including Environmental Requirements, Energy and Sustainability aspects described in Sections A, B and C, below. For further information, please review the real estate guidance for land and space.

##### **A. Environmental Requirements.**

1. Environmental Due Diligence: FAA real property transactions are subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions, in order to identify and minimize potential environmental liabilities associated with the condition of the property and past activities at the site. Environmental due diligence requirements must be completed prior to executing contracts for the initial acquisition or disposal of real property, including the conveyance, sale or transfer of any FAA land, buildings, and structures.
2. National Environmental Policy Act (NEPA): Before acquiring (by lease, purchase, or otherwise) any additional land (new sites or to expand existing sites), the FAA must comply with all applicable requirements of the National Environmental Policy Act (NEPA) in accordance with the latest version of FAA Order 1050.1, *Environmental Impacts: Policy and Procedures*. The appropriate level of environmental review must be determined by the program office Environmental Specialist or the project designated Environmental Specialist. The RECO must obtain written notification from the program office that all applicable NEPA requirements have been met prior to proceeding with the land acquisition. The written notification must be placed in the real estate file.

##### **B. Energy Requirements**

Energy Star certified spaces: Section 435 of the Energy Independence and Security Act of 2007 (EISA) prohibits Federal agencies from leasing buildings that have not earned an Energy Star label after December 19, 2010 unless the space requirement comes within the specific exemptions provided in the EISA statute. For the list of exemptions, see Real Estate Guidance 2.4.1 Appendix A: Space Administrative Guidance. In order to ensure compliance with EISA Section 435, when a RECO leases space greater than or equal to 10,000 gross square feet, the building must have earned an Energy Star label in the most recent year, or the ownership must commit to earn the

Energy Star label within one year following the lease execution. The RECO can determine the acquisition is financially feasible if the rental offered for a conforming building is no more than 10% over the market rate. If the RECO determines the cost of a conforming building is not financially feasible, documentation must be maintained in the real estate file.

### C. Sustainability Requirements

Executive Order (EO) 13693, *Planning for Federal Sustainability in the Next Decade*, sets goals for federal agencies to make their building inventories compliant with the February 2016, *Guiding Principles for High Performance and Sustainable Buildings* (Guiding Principles). The Guiding Principles establish building standards for: integrated design, energy performance, water conservation, indoor environmental quality, environmental impact of materials, and climate resilience.

Leases are no longer included in calculating compliance with the Guiding Principles (only owned buildings are included). However, the RECO should strive to incorporate as many of the Guiding Principles as possible in new lease actions when financially feasible. This may include leasing in buildings that have received Leadership in Energy and Environmental Design (LEED) certification. The space acquisition must be considered financially feasible if the rental offer for space in a conforming building is no more than 10% greater than the market rate for a comparable conventional building in the same rental market.

#### 4.2.3.3.3 Budgetary Review Revised 4/2015

Funding requirements for all real property transactions must be submitted to Real Property Division, ALO-200, the appropriate budget office and the service area budget lead for review prior to the RECO committing the Government (signing the contract) to ensure compliance with 4.2.3.3.1 Succeeding Leases/Renewal Lease which states “In accordance with the provisions of 49 USC 40110(c)(1) , which references 1341(a)(1), a RECO may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation”. For further information see 3.1.4 Budget Review and Approval.

#### 4.2.3.4 Procurement Method Revised 1/2012

The RECO makes the determination of whether the requirement will be satisfied through competition or single-source acquisition. A preliminary assessment, such as an informal market survey via phone calls of potential available sources within the geographic area of consideration (i.e., delineated area), may be needed to assist in the determination of the procurement method. When developing a lease procurement strategy, the RECO must first consider acquiring buildings that have earned the current year Energy Star label, and buildings conforming to the Guiding Principles (LEED Silver and above certified buildings may be used to identify buildings that potentially conform to the Guiding Principles) as well as buildings that meet appropriate life safety and seismic certification requirements.

Competition is the preferred method of procurement and should be used whenever practicable and reasonable. Competition is obtained by providing two or more sources an opportunity to express an interest in satisfying FAA's requirements. Competition is appropriate when the requirement is not site or location specific and reasonable possibility exists that there is more than one provider that can meet the FAA's needs. Interest from potential sources may be expressed either orally or in writing.

The single-source method of procurement is appropriate when technical requirements, business practices, or programmatic needs have determined that a specific location, site, or unique need is required to meet the FAA's mission, or when it has been determined that only one source is reasonably available that can meet the requirement. Advertising is not required if the resultant acquisition is for a site-specific location and deemed a single-source procurement.

#### **4.2.3.5 Solicitation for Offers Revised 1/2012**

The RECO works with the program office to determine and define the delineated area required to acquire space that will fulfill the mission of the FAA and will consider buildings which meet Guiding Principles and EISA requirements when establishing the delineated area. For space leases, the delineated area must be of sufficient size to ensure competition between buildings that meet HPSB Guiding Principles and EISA requirements for Energy Star buildings, unless it has been demonstrated in the market survey, that there is no space available that meets the above criteria and that leased construction is not economically feasible. The SFO has been revised to include appropriate provisions ensuring compliance with sustainability requirements. Refer to the Solicitation for Offerors (SFO) template for further information.

The RECO is not required to solicit offers from all sources within the geographic area of consideration. It is only necessary that offers be solicited from a sufficient number of sources (at least two sources are sought, if possible) to promote competition to the extent practicable and reasonable.

Data obtained during the market survey, advertisement, and/or appraisal can also be used to determine a range of reasonable rents charged by Lessors within the area of consideration for space or land similar to that being acquired by FAA. (See below for more information.)

For single-source procurements, a market survey and/or appraisal should be conducted to determine or verify the reasonableness of the offer. At least three sources of data should be queried to ensure the validity of the data. If single-source procurement is selected, which is often the case for most FAA land acquisitions, the RECO must document the justification/determination for a single-source acquisition, and must maintain the documentation in the lease file, under the Negotiator Report.

The RECO will send the Solicitation for Offerors (SFO) or proposed lease contract to those offerors who meet the requirements of the FAA, as described above.

#### **4.2.3.5.1 Market Survey/Advertisement/Appraisal Added 1/2008**

When utilizing the competitive method of procurement, the FAA must conduct a market survey to obtain market information and identify potential sources within the geographic area of consideration or market once the lease requirements have been finalized. Market survey data can be used to: determine the availability of properties within the area of consideration; eliminate unsatisfactory properties from consideration; determine the willingness of landowners to provide property for the FAA's use; determine fair market rents; determine suitability of responses to advertisements; and, determine the estimated cost for the leasehold. When possible, the survey should include on-site visits with the requesting office to determine if suitable properties are available, or if properties offered in response to an advertisement meet requirements. Prior to conducting the market survey, the FAA should have developed a draft Solicitation for Offer or a draft lease contract defining specific requirements. The draft SFO or draft lease contract should be reviewed with the offer or offeror's representative to ensure a full understanding of FAA's requirements.

As mentioned above, advertising is not required for the acquisitions of site-specific locations or those determined to be appropriate for single source procurement. Also the requirement need not be publicly advertised when the FAA determines that it is not warranted, or reasonable competition has been achieved without advertising. If the RECO determines that advertising is required, the publicizing method that should be used is that which is most likely to result in the receipt of offers appropriate to satisfy the specific requirement. Acceptable methods of advertisement include, but are not limited to, publication of the requirement in a newspaper in the jurisdiction where the requirement is located, and publicizing the requirement on a real estate or other website.

In addition to the market survey information, an appraisal may/should be obtained by the RECO to assist in the determination of the fair market rent, and of the value or just compensation for the purchase of a specific property. An appraisal is a formal written statement that a qualified appraiser prepares independently and impartially, giving an opinion, as of a specified date, of the defined value of a described parcel of real property, supported by the presentation and analysis of relevant market information.

#### **4.2.3.5.2 Use of Brokers/Agents Added 7/2016**

RECOs are prohibited from entering into any type of contract or agreement, including a letter contract, that acknowledges, authorizes, or any way states or implies that a real estate broker or a real estate agent represents the FAA or Government in a real property transaction. This prohibition does not restrict the RECO from contacting Listing or Cooperative Brokers or real estate agents to gather information concerning properties available for sale or lease within a particular geographic delineated area and/or from requesting or receiving market information and rental rates/sale prices with respect to that area. Neither does this section prohibit the RECO from acknowledging, if asked, that a Cooperative Broker was instrumental in bringing a particular property to the RECO's attention.

#### **4.2.3.6 Evaluation of Offer(s) Revised 1/2008**



If the competitive method is used, once offers are received, selection for final award may be made. Selection from the competitive method may be made based upon that proposed offer that best meets the FAA's requirements as defined in the SFO or proposed contract lease document. If the acquisition is being conducted using the single-source method, the RECO can begin negotiations with the single offeror immediately upon receipt of an offer.

#### **4.2.3.6.1 Negotiation Added 1/2008**

Based on the results of market surveys or appraisals, the RECO must negotiate with property owners to obtain the necessary land/space interests at a fair and reasonable cost. The RECO should remember that the value of the Government's enhancements to the property, or the intended use of the property by the Government, should not be considered in determining the procurement or lease cost of the real property. The offer(s) should be reviewed to determine which offer(s) best meets the requirements as indicated in the SFO and/or proposed lease contract. Any reasonable offer received up to the point of award may be accepted and considered at the discretion of the RECO. If the evaluations indicate that the offerors have different interpretations of the FAA's requirements, the RECO is encouraged to implement a process to clarify the ambiguities and allow offerors to revise their proposals in accordance with the clarifications provided.

The evaluation should include a full analysis of the total payment of rent and other costs to the FAA and the total cost of any alternatives considered. The reasonableness of specific costs should be evaluated against data from sources such as market surveys, appraisals, or Government estimates. The cost to the FAA should be based on the fair market value of the procurement, and not include any value created by the FAA's enhancements or intended use. This can be done by appraisal or use of market data. This is true for competitive or non-competitive space. The final selection should result in the best value to the FAA.

The RECO must use the [Negotiator Report](#) to document negotiations for all types of leases – space and land, cost and no cost. This document must be used for the entire process, i.e. before offers received, during evaluation and award recommendation and after award.

#### **4.2.3.6.2 Communication Added 1/2008**

All items may be communicated and discussed with offerors with the goal of clarifying the FAA's needs and providing a basis for the final contract to assure that all costs involved are fair and reasonable. Communications may continue up to the point of award and may be terminated at any time by the FAA.

During final communications, an offeror can be asked to lower the proposed price/rental to a stated rate.

At any time during the real property procurement process, if the parameters of a competitive offer have been determined, any offer falling within these parameters may be selected at the discretion of the RECO for direct communication.

Communications with all potential offerors should take place throughout the competitive process. Communications may start in the planning phase and continue through contract award. All SFOs and/or proposed lease contracts should clearly inform offerors how communications will be handled during the initial screening phase.

The purpose of communications is to ensure there are mutual understandings between the FAA and the offerors about all aspects of the procurement, including the offerors' submittals. Information disclosed as a result of oral or written communication with an offeror may be considered in the evaluation of an offeror's submittal.

To ensure that offerors fully understand the intent of the SFO and/or proposed lease contract, the FAA may conduct one-on-one meetings with individual offerors. One-on-one communications may continue throughout the process, as required. Communications with one offeror do not necessitate communications with other offerors, since communications will be offeror-specific. Regardless of the varying level of communications with individual offerors, the RECO must ensure that such communications do not afford any offeror an unfair competitive advantage.

Communications may necessitate changes in the FAA's requirements. If, after release of a SFO and/or proposed lease contract, it is determined that there has been a change in the FAA's requirement(s), all offerors competing at that stage should be advised of the change(s) and afforded an opportunity to update their submittals accordingly. The RECO should be aware that depending on the scope of the change, the acquisition may have to start from square one again.

All determinations relating to changes in requirements, including waivers, will be documented in the negotiator report.

Where communications do not result in any changes in the FAA's requirements, the FAA is not required to request or accept offeror revisions. Technical leveling and auctioning techniques are prohibited.

#### **4.2.3.7 Utilities Revised 4/2012**

Like the acquisition of leasehold interests, the utility acquisition process must be conducted following the best commercial business practices in a fair and equitable manner, while complying with all applicable regulations. The utility guidance (4.1) addresses the acquisition, management and termination of utility services, i.e., electric, gas, water, refuse, and sewer in support of facilities constructed, operated, and maintained by the Federal Aviation Administration. The RECO/CO must follow the guidance. All new construction and major renovation projects at FAA facilities will include installation of advanced meters for electricity in accordance with the Energy Policy Act of 2005 (EPAct 2005), and gas and steam advanced meters in accordance with the Energy Independence and Security Act (EISA) 2007, Section 434(b). Advanced meters should also be considered to collect water use data for each water supply source (e.g., domestic potable water and non-potable water, including reclaimed water and rainwater). For existing FAA facilities where no major renovations are anticipated, advanced meters must be implemented where cost-effective and practicable. Cost-effectiveness must be determined on a 10-year simple payback, assuming annual



savings of at least 2% or higher depending on the use of the metered data to implement energy savings and other cost savings measures.

#### **4.2.3.8 Condemnation Revised 1/2008**

Eminent domain proceedings, in accordance with established procedures, should be initiated when negotiations have reached an impasse and a satisfactory conclusion to the procurement cannot be reached. Generally, protracted negotiations are not in the best interests of either party. Legal participation is required on all condemnations. The Department of Justice rules on condemnation and requirements for title must be followed when real property is acquired through purchase or condemnation proceedings. (1.1.19 Condemnation Guidance)

#### **4.2.3.9 Award Revised 4/2008**

Competitive awards must be made to the offeror whose offer best met FAA's requirements/needs as defined in the SFO and/or proposed lease contract. The offer selected should provide the best value to the United States, cost and other factors considered. The RECO must document the objective criteria supporting the rational basis, i.e. the [Negotiator Report](#) and placed in the real estate lease contract file.

If award is made non-competitively, the reason(s) for a RECO's determination to make a single-source award must be documented in the negotiator report.

Any changes or additions, such as the addition of a requirement from the using service/requiring office, resulting from communications with the proposed awardees, or that are stated in the selected offer, should be made to the proposed contract prior to award. If such change is deemed outside the original requirements of the SFO and/or proposed lease contract, the RECO must start the procurement again. (Put that in above, too.)

Legal review of leases is required where there is deviation from the standard lease clauses. Legal review is required on all purchases of real property. The RECO is required to send three original copies of the proposed contract(s) to the property owner or provider for signature and returned for final execution by the FAA. The RECO should follow the guidance on recording leases and titles as mentioned in the land guidance 1.0.

After execution of the lease, the RECO must ensure that all information is entered into the real property database, i.e. REMS. RETS.

##### **4.2.3.9.1 Terms of Leases Revised 4/2009**

The RECO is authorized to enter into firm-term leases within established restrictions (2.4.4 Lease Terms). The RECO may award firm term leases not to exceed 20 years under the authority of 49 U.S.C. 40110(c)(1) without violating the Antideficiency Act. If a lease requires the payment of rent

above a nominal amount—e.g., \$1.00 per year--a new lease must be procured when the existing lease contract has been in effect for 20 years.

The RECO must complete the Lease Evaluation Form as early as possible in order to determine whether the lease will be a Capital Lease in accordance with OMB Circular A-11, Appendix B. If determined to be a capital lease (3.1.5 Capitalization Guidance), the RECO will notify the Logistics Service Area Manager and must ensure with the program office that FAA has the adequate funding for the requirement.

#### **4.2.3.10 Alterations and Improvements Revised 10/2012**

All alterations and/or improvements, including Tenant Improvements (TIs), are required by FAA to make the leased premises acceptable for FAA occupancy, and post occupancy alterations and improvements must be based upon technical requirements, business practices, or programmatic needs. TIs are the finishes and fixtures that typically take space from the "shell" condition to a finished, usable condition.

Initial alterations, improvements, related items, and services associated with real property will be considered awarded through competition when included within the scope/requirements of the original procurement.

Alterations and improvements to an existing facility may be considered within the scope of a lease, if they are necessary to the operation of the facility as contemplated by the original procurement. In a leased facility, to minimize potential liabilities and restoration costs as well as other claims, the lessor should be considered the first choice for the provision of alterations. In making the determination of whether a lessor's proposed costs to make alterations and improvements to a leased facility are reasonable, the RECO should use a 1.) formal appraisal, 2.) construction data, 3.) cost to build publications, and/or 4.) an independent government cost estimate. If FAA makes the alterations, the lessor should be requested to waive any claims for restoration of the premises.

Any construction to leased or owned facilities must comply with the requirements of the Davis-Bacon Act. The Davis Bacon Act (40 U.S.C. 276a-278a-7) provides that contracts of \$2,000 or more to which the U.S. or the District of Columbia are a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the U.S. must include provisions that no laborer or mechanic employed directly upon the site of the work will receive less than the prevailing wage rates as determined by Department of Labor.

If the lessor is unwilling or unable to provide the means to complete the improvements, and the property is leased for no or nominal consideration, then the FAA may exercise its authority under 49 USC Section 44502(a)(5) to make the required improvements.

A discussion of issues applicable to TIs, including the TI allowance often offered in the commercial market to encourage long term leases, is set forth in Real Estate Guidance 2.3.3, Tenant Improvements for Space Acquisition.

#### **4.2.3.11 Inspection and Acceptance Revised 1/2008**

The RECO, or designated representative, should arrange to inspect the real property sufficiently in advance of the occupancy date to ensure it is acceptable and ready for use. Substantial, non-punch list deficiencies that would impact FAA use and/or occupancy of the real property in support of its mission must be corrected before acceptance of the real property, related service, or utility service.

#### **4.2.3.12 Disposal of Real Property Revised 1/2008**

There are two sources of authority under which the FAA may dispose of real property:

1. Pursuant to 49 USC 40110, the FAA has the authority to dispose of airport and airway property and technical equipment used for the special purposes of the FAA for adequate compensation.
2. The second source of authority is through the General Services Administration (GSA) and is governed by the Federal Property Administrative Services Act of 1949, as amended. This Act authorizes the Administrator of GSA to dispose of real property.

Also the RECO must include an explanation of how the acquisition or disposal action complies with FAA established policy and guidance in the negotiator report.

#### **4.2.3.13 Documentation Revised 1/2008**

Sufficient documentation must be developed that explains and justifies the procurement action taken. These documents should be retained in the applicable real estate acquisition file. The RECOs must use a 6 part folder system for all their acquisition files. The RECO must use the land, space and/or utility checklist when putting together the documentation for the lease file.

##### **4.2.3.13.1 Accountability Added 1/2008**

Real Estate Managers and/or their designees are to ensure that adequate records are maintained for all FAA owned, leased, and utilized real property. Managers and team leads are responsible for the accuracy and quality of the work of the RECO and should review the lease document files to ensure compliance with AMS. Further the real estate managers should ensure the real estate employees are trained in accordance with the real estate competencies and curriculum.

##### **4.2.3.13.2 REMS Revised 1/2010**

All real property assets must be recorded in Real Estate Management System (REMS) in accordance with the [REMS User Guide](#) (FAA only). Land and space ownership must be recorded in REMS after the title passes to the Federal Government. Land, structure and space leases must be recorded in REMS after the lease is fully executed. Other real estate assets (i.e. structures) purchased by procurement contracting officers must be recorded in REMS after completion of the Joint Acceptance and Inspection (JAI), as part of the regular close out process.

The program office with management responsibility that authorizes a change of location of a structure must notify the Real Estate Contracting Officer (RECO) with the changed location information. The RECO will make the change in REMS following notification by the program office. Logistics personnel must ensure accurate and complete real property asset data entry into REMS. All lines of business must assist logistics personnel in the annual inventory to validate required data elements in accordance with Federal Real Property Council (FRPC) and the DOT Asset Management Plan (AMP).

#### **Lease Scanning in REMS:**

As of July 1, 2007, all new and renewal lease documents must be scanned at the point of origin (i.e., region-level, etc.) once the lease has been activated. The lease must be uploaded to the REMS server, and attached to the respective lease number. The lease document will be available for viewing from REMS screens. See Real Estate Guidance 3.1.7.1 for scanning instructions.

#### **4.2.3.14 Miscellaneous Provisions Revised 1/2008**

##### **4.2.3.14.1 Disclosure of Information Added 1/2008**

Source selection information and proceedings must not be discussed outside the service organization. The Source Selection Officer (SSO) must determine the extent to which source selection information is disclosed and must execute a Certificate of Nondisclosure as appropriate.

##### **4.2.3.14.2 Procurement Integrity Act Revised 10/2018**

FAA is subject, with modifications as described in AMS Guidance with FAA-specific language, to the Procurement Integrity Act (41 U.S.C. §§ 2101-2107).

##### **4.2.3.14.3 Organizational Conflicts of Interest Added 1/2008**

The policy of the FAA is to avoid awarding contracts to contractors who have unacceptable organizational conflicts of interest.

The FAA will resolve organizational conflict of interest issues on a case-by-case basis; and when necessary to further the interests of the agency, will waive or mitigate the conflict at its discretion.

#### **4.2.3.14.4 Conflict of Interest Added 1/2008**

Any service organization or Office of Dispute Resolution (ODRA) member who is a Federal employee that has a real or apparent conflict of interest must withdraw from participation in the procurement process when required by law (18 U.S.C. 208) or regulation (5 CFR Part 2635). Non-Federal service organization or ODRA members are held to the same standards in order to sustain the integrity of the procurement process.

#### **4.2.3.14.5 Electronic Commerce in Contracting Revised 1/2008**

FAA may, to the extent practicable and cost effective, use electronic commerce procedures and processes, including acceptance of electronic signatures, to conduct and administer procurement actions. The Electronic Signatures in Global and National Commerce Act (E-SIGN) provides an equivalency between legally-required written records and the same information in electronic form.

#### **4.2.3.14.6 Disaster or Emergency Preparedness and Response Added 8/2009**

When a health-related emergency occurs and is declared by the United States Department of Health and Human Services Centers for Disease Control and Prevention (CDC) or other authorized Federal, state or local government official, the FAA Real Estate Contracting Officer (RECO) is authorized to acquire additional cleaning supplies or services in our leased facilities. For further information, please see Section 2.4.14, Appendix O: Disaster or Emergency Janitorial Services.

#### **4.2.3.15 Conveyance Added 1/2012**

Conveyance by transfer agreement of FAA real property may be practical in situations where transfer of ownership is in the best interests of the government, such as to facilitate airport improvements or to satisfy contract obligations. Conveyance is a real estate transaction subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions. Buildings and structures being considered for conveyance must be also screened by the appropriate FAA environmental and safety professionals for any environmental or safety issues that may require mitigation prior to transfer.

#### **4.2.4 Housing Policy Added 10/2011**

The purpose of the FAA Housing program is to provide housing for FAA employees supporting the National Airspace System (NAS) who are working in remotely located areas where commercial housing is not available. The guidance follows the mandate in OMB Circular A-45 and must be followed for the acquisition, management and disposal of FAA owned or leased housing facilities. These provisions are applicable to all Lines of Businesses (LOB) and organizational elements having a requirement for and using FAA housing quarters.

#### **4.2.5 Real Estate Certification and Warrant Requirements Revised 7/2013**

FAA requirements specify using a competency-based model to provide structure and logic for learning development for acquisitions professions to make reasonable, justified decisions to accomplish agency goals. FAA's mission-critical real property transactions are highly complex and challenging and require a skilled and knowledgeable workforce. Consequently, the FAA developed an acquisition career development program for many series, including the Real Estate Contracting Officers/Specialists (RECO/S).

Therefore, unless otherwise prohibited by existing law or regulation, or an existing collective bargaining agreement, all RECO/S must meet the training and experience requirements set forth in AMS Policy Section 5, Acquisition Career Program, to qualify for certification. Warrant level qualifications and designations are related directly to RECO/S certification. For more information, please see Section 6.1, Real Estate Career Development. Attaining a given level of certification or warrant does not, in and of itself, qualify an employee for promotion or selection to a position.

### **4.3 Integrated Logistics Support**

#### **4.3.1 Principles Revised 4/2013**

Integrated logistics support is the critical functional discipline that plans, establishes, and maintains an integrated logistics support system for the lifecycle all FAA products and services. The objective is to provide the required level of service to the end user at optimal lifecycle cost to the FAA for new investment programs and the sustainment of fielded products and services.

#### **Principles include:**

***Centralized management of integrated logistics policy and guidance*** with the Vice President of Technical Operations serving as the key executive and the Associate Administrator for Regions and Centers providing support

***Logistics managers within each service team*** responsible for defining, documenting, obtaining, and managing integrated logistics support for service-team products and services over their lifecycle

***Logistics managers document planning for integrated logistics support in an integrated logistics support plan***

***Collaborative logistics decision-making based on business case analysis results*** to achieve high performance and best value for the agency

***Integration of operations and support requirements early in the program lifecycle*** using the program requirements document

***Long-term strategic partnerships with suppliers and contractors*** to achieve full lifecycle support for operational assets

***Managing and integrating supply support across the agency*** to improve efficiency, save money, and minimize ownership costs

***Continuously measuring logistics performance against key organizational measures*** to drive corporate decisions and tactically manage logistics services

***Training and certification of logistics specialists*** so the best logistics systems can be determined, implemented, and operated over the service life of operational assets

***Developing and using logistics databases and tools*** to manage assets, track outages and service delays, control inventory, and identify opportunities for improving logistics support

#### **4.3.2 Standard Elements of Integrated Logistics Support Revised 10/2007**

The standard elements of integrated logistics support are:

- ☐ Maintenance planning;
- ☐ Maintenance support facility;
- ☐ Direct-work maintenance staffing;
- ☐ Supply support;
- ☐ Support equipment;
- ☐ Training, training support, and personnel skills;
- ☐ Technical data;
- ☐ Packaging, handling, storage, and transportation;
- ☐ Computer resources support.

A definition of each element is in Appendix C.

#### **4.3.3 Logistics Management During the AMS Lifecycle Revised 10/2007**

Logistics elements are addressed during each phase of the AMS lifecycle management process (service analysis, concept and requirements definition, investment analysis, solution implementation, and in-service management). This entails managing the interdependencies among logistics elements; integrating the acquisition and lifecycle management of logistics support with the investment product or service; and adhering to the principles of supply chain management throughout.

##### **4.3.3.1 Service Analysis Added 10/2007**

The service team logistics manager analyzes support data collected on operational assets to determine logistics trends and service needs. Results are fed into service analysis by each service organization that determines and prioritizes overall service and infrastructure needs. Service analysis results across



service organizations are integrated into the enterprise architecture roadmaps, which specify when highest priority service needs enter into the appropriate solution- oriented lifecycle management phase (e.g., concept and requirement definition, investment analysis, or solution implementation).

#### **4.3.3.2 Concept and Requirements Definition Revised 4/2013**

The service team logistics manager works with the CRD team to define preliminary logistics requirements and a maintenance concept of operation for the preliminary program requirements document. Preliminary requirements are not solution-specific and do not limit the search for alternative solutions to mission need.

#### **4.3.3.3 Investment Analysis Revised 11/2009**

The service-team logistics manager is a core member of the investment analysis team throughout initial and final investment analysis. During initial investment analysis, the logistics manager evaluates the maintenance concept of each alternative solution and reports implications to lifecycle support costs and benefits in the business case analysis report. Trade-off among RMA parameters (as lifecycle cost-reduction measures) is encouraged so long as minimum service performance thresholds are not breached.

During final investment analysis, the logistics manager:

Develops logistics elements for any screening information request issued by the service team in support of final investment analysis;

- ☐ Evaluates the logistics and support elements of contractor responses;
- ☐ Assists the investment analysis team in defining:
  - ☐ ILS-specific baseline measures for the acquisition program baseline;
  - ☐ Final logistics requirements in the program requirements document;
- ☐ Detailed logistics activities and milestones in the implementation strategy and planning attachment.
- ☐ Advises on preliminary disposal planning for the asset(s) under consideration for replacement;
- ☐ Identifies activities and establishes milestones for integrated logistics support elements of the In-Service Review (ISR) checklist; and
- ☐ Tracks completion of logistics support activities prerequisite to the final investment decision.

During competitive procurements, offerors are evaluated on the suitability of their maintenance and support plans and demonstrated ability to support other fielded systems, as well as compliance with contract technical specifications.

#### **4.3.3.4 Solution Implementation Revised 10/2007**



During solution implementation, the logistics manager verifies that contractor logistics product development and field installation are consistent with contract requirements and user needs through commissioning. The logistics manager also assists the service team in verifying that logistics-related activities in the ISR checklist are complete and the product or service is operationally suitable at the in-service decision.

#### **4.3.3.5 In-Service Management Revised 10/2007**

The logistics manager assists the service organization and its systems engineering efforts throughout in-service management in the collection and assessment of operational data for use in evaluating product or service effectiveness. These activities include:

- ☐ Tracking and evaluating RMA performance and supportability issues of fielded assets;
- ☐ Analyzing supportability issues caused by market-driven product, system, or subsystem obsolescence;
- ☐ Determining the most cost-effective means for avoiding supportability shortfalls;
- ☐ Assessing the logistics impact of obsolescence-driven product changes;
- ☐ Evaluating the impact of engineering changes, performance shortfalls, or technological opportunities on the integrated logistics support of operational products and services.

The logistics manager also participates in disposal activities of products scheduled for removal from service.

#### **4.3.4 Who Does It? Revised 10/2007**

Each line of business manages integrated logistics support for the products and services for which it is responsible. The ATO Technical Operations organization is the office with primary responsibility for logistics policy and guidance. The ARC organization provides in-house integrated supply chain management, depot support, and logistics services. The logistics manager is the focal point for logistics planning, implementation, and in-service management within the service team. The ARC logistic-element management team supports service-team logistics managers in logistics planning and management.

### **4.4 Test and Evaluation Revised 7/2016**

Test and evaluation is planned and conducted in accordance with the guidelines, standards, and practices found on the FAA Acquisition System Toolset (FAST) to:

- ☐ Provide essential information in support of decision-making for investment programs;
- ☐ Provide essential information for assessing technical and investment risks;
- ☐ Verify the attainment of technical performance specifications and objectives; and
- ☐ Verify and validate that systems, solutions, and capabilities are operationally effective and suitable for the intended use.

The types of test and evaluation standards and processes to be followed for each investment program are based on the milestones and decision points they support and the type of investment program. These test and evaluation standards and processes address: NAS new investment, NAS modifications, and Mission Support programs.

The high-level test strategy is defined in the implementation strategy and planning document. The program management plan specifies how the test strategy will be executed. Based on complexity and criticality, new investments may be required to deliver a test and evaluation master plan (TEMP), as indicated on the ACAT designation form. For designated investment initiatives, the TEMP provides more detail than the ISPD and the PMP on contractor and FAA test needs, scope, planning and reporting.

The test and evaluation approach, level of analysis, and test criteria are determined by reporting requirements for program milestones and decisions. The requirements that need to be verified and validated form the basis for test criteria. The risks and complexity of the system, solution, or capabilities being tested drive the scope and robustness of evaluation methods, test cases, and reporting structure.

#### **4.4.1 Service Analysis, Concept and Requirements Definition, and Investment Analysis**

**Revised 7/2016**

During service analysis, test and evaluation activities help identify and prioritize critical FAA service needs. During concept and requirements definition, test and evaluation helps to identify the best alternative solutions to those needs. During investment analysis, the criteria for testing operational effectiveness and suitability are expressed as critical performance requirements and critical operational issues in the program requirements document.

For investment programs designated to have a test and evaluation master plan a preliminary TEMP (pTEMP) is developed during initial investment analysis based on the concepts and functions documented in the preliminary program requirements document to support the initial investment decision. An initial TEMP (iTEMP) is developed during final investment analysis once program requirements are finalized and the identity of the most promising solution is known. The iTEMP describes the test program and establishes the basis for test requirements in the request for offer to industry and test costs/and schedules in the acquisition program baseline. The iTEMP is required to support the final investment decision. The ISPD and PMP define the plan and schedule for delivery of the final TEMP (fTEMP).

#### **4.4.2 Solution Implementation Revised 7/2016**

Solution implementation activities follow documented and structured T&E processes appropriate to the systems, solutions, and capabilities being tested. Early test and evaluation activity assesses potential operational, safety, and security risks and identifies opportunities for risk mitigation. Later

test and evaluation examines performance and operational readiness (suitability and effectiveness) in support of decision-makers at the production, deployment, and in-service decisions.

Each test and evaluation program consists of developmental, operational and site testing as specified in the fTEMP (if required) and associated PMP and ISPD, as well as independent operational assessment for designated programs (see AMS Section 4.5). Developmental testing verifies requirements, functional design, and integration of the system, solution, or capability. Operational testing validates achievement of operational needs, as well as the effectiveness and suitability of the solution. For deployable products site testing verifies and validates requirements, design, and suitability of the solution in the fielded environment and configuration. As part of site testing, field familiarization testing may be required to support the site operational readiness decision.

#### **4.4.3 In-Service Management Revised 7/2016**

Developmental, operational and site testing are performed in accordance with documented, structured test processes defined by each in-service management organization in accordance with FAA Orders and Acquisition Management System Policy guidance. This applies to development and implementation of all NAS and Mission Support modifications during the in-service management lifecycle phase. In-service management test processes include standard test approaches that define the phases and detailed activities to be included during testing. These processes also support/and ensure that safety risk management and information system security requirements are addressed.

#### **4.5 Independent Operational Assessment Revised 4/2018**

The FAA is committed to verifying that new solutions are operationally effective, suitable, and safe before deployment. The Chief Operating Officer, through the Vice President for Safety and Technical Training, designates solutions on which to conduct independent operational assessment. The decision to designate a solution for independent operational assessment is based on such factors as complexity, operational criticality, lifecycle cost, interoperability, and safety risk.

During the early stage of solution implementation, the Independent Safety Assessment Team identifies potential operational and safety risks and communicates them to the acquisition organization. Once acquisition test activities are complete and the solution is operational at the key site(s), the Vice President of the acquisition organization will declare in writing to the Vice President of Office of Safety and Technical Training, via the Independent Operational Assessment Readiness Declaration, the readiness of the solution to enter independent operational assessment. Independent operational assessment provides an independent determination of operational readiness in support of deployment decisions (such as an in-service decision).

#### **4.6 Deployment Planning Revised 4/2009**

Deployment planning prepares for and assesses the readiness of a solution to be implemented into the National Airspace System. Deployment planning is part of a continuous in-service review process that begins early in the lifecycle management process, usually during the development of

requirements. All programs undergo some degree of deployment planning to ensure key aspects of fielding a new capability are planned and implemented, as well as to ensure the deployment does not create a critical deficiency in the National Airspace System. The level of authority for deployment readiness assessment and in-service decision (ISD) may vary from the service organization leader to the Joint Resources Council, chaired by the head of the sponsoring line of business.

The conduct of deployment planning involves coordination among and participation by many critical functional disciplines. Trade-offs among cost, schedule, performance, and benefits relative to these functional disciplines must also include the impact of deployment and implementation considerations. Deployment planning tools (such as a tailored in-service review checklist) must be used to assist in identifying, documenting, and resolving deployment and implementation issues. Methods and techniques include, but are not limited to, a tailored application of generic tools, the integration of checklist issues with other emerging issues (such as program trouble reports from test and evaluation), development of action plans for resolution of checklist and other items, and documentation of the results of issue resolution and mitigation. Consistent deployment planning must be visible in contractor "statement of work" and associated efforts. The status of deployment planning (and issue resolution) activities are briefed periodically (e.g. at service-level reviews), presented at the ISD meeting, summarized in the ISD memorandum, and audited during the post implementation review. The implementing service organization is responsible for the successful completion of deployment planning activities. The operating service organization provides guidance and technical expertise related to ISR issues or other factors that may affect the ability to deploy and support the intended service, product, or requirement. All lines of business will resolve and close their respective ISR issues.

#### **4.7 Human Factors**

Human factors are a *critical* aspect of aviation safety and effectiveness. Service organizations must assure that planning, analysis, development, implementation, and in-service activities for equipment, software, facilities, and services include human factors engineering to ensure performance requirements and objectives are consistent with human capabilities and limitations. Human factors engineering should be integrated with the systems engineering and development effort throughout the lifecycle management process, starting with concept and requirements definition and continuing through solution implementation and in-service management ([Human Factors Guidelines](#)).

#### **4.8 Environmental, Occupational Safety and Health, and Energy Considerations**

**Revised 1/2013**

FAA investment programs must comply with relevant federal, state, and local regulations, and FAA orders, specifications, and standards pertaining to environmental and occupational safety and health (EOSH) requirements, and energy and water requirements. FAA lines of business and staff offices must comply with all applicable requirements of the National Environmental Policy Act (NEPA) in accordance with the current version of FAA Order 1050.1, *Environmental Impacts: Policies and*

*Procedures.* Service organizations responsible for implementing investment programs must consider EOSH and energy and water requirements, and address them throughout the lifecycle management process in order to:

- ☐ Ensure the installation and operation of systems, equipment, facilities, and related program activities will not adversely impact personnel safety and health or the environment; and
- ☐ Ensure the acquisition program baseline of the investment initiative reflects the schedule and cost of EOSH requirements.

Questions on the applicability of state and local EOSH requirements to federal acquisitions should be referred to the Office of the Chief Counsel for an evaluation of the supremacy clause and sovereign immunity implications.

## **4.9 Information Technology**

Information technology represents a significant financial investment for the FAA, as well as a set of essential tools and services that support multiple FAA missions, functions, and activities. To develop, deploy, and manage information technology effectively, service organizations must apply sound information and engineering principles to the lifecycle planning and acquisition of information technology. Service organizations must also continuously involve users in the development, operation, and maintenance of information and application systems. Service area plans should leverage corporate information technology capabilities such as FAA telecommunications, emphasize the use of open systems and shared data, implement recognized information technology standards, and take advantage of economies of scale.

## **4.10 System Engineering**

Systems engineering management is conducted and documented throughout the lifecycle management process at all levels of management and integration, from individual investment programs to the National Airspace System as a whole. At the NAS-level, systems engineering management integrates across investment programs to achieve an efficient and fully interoperable National Airspace System. At the program level, it optimizes performance, benefits, operations, and lifecycle cost.

All organizations responsible for the development, implementation, and lifecycle management of FAA investment programs must develop and institute a systems engineering management program consistent with guidance in FAST [[system engineering guidance](#)]. This includes organizations responsible for integrating investment programs into larger "system of systems" such as the National Airspace System. The systems engineering management program of each organization must apply systems engineering activities such as functional analysis, requirements management, synthesis, and validation and verification throughout the lifecycle management process, consistent with the specific functions and responsibilities of the organization.

## **4.11 Security Revised 10/2018 1/2019**

### **Introduction**

Service organizations and program offices must allow sufficient time and resources to address security laws, policies, and orders including the cost of implementing required security controls into acquired components. Security policy within the FAA is divided into information security; physical security, facility security, and personnel security; and sensitive information and personally identifiable information. There is overlap between the disciplines (for example, physical security is employed to protect classified materials), so all areas of security policy must be evaluated to ensure full compliance with the various orders and policies.

### **Information Security and Privacy Policy**

The Federal Information Security Modernization Act, 2014 (FISMA), Office of Management and Budget Circular A-130, Management of Federal Information Resources, National Institute of Standards and Technology (NIST) guidance, and other federal, departmental, and agency-level guidance and standards as amended, describe information security & privacy (IS & P) needed for all FAA information systems. FAA information systems reside in one of three domains: national airspace system (NAS), mission support/administrative, and research and development. They may consist of government-owned/managed components, contractor-owned/managed components, or combinations of these types. They are segregated into infrastructure for air traffic operations and infrastructures for information technology administrative support. The infrastructures exchange information via authorized security gateways.

FAA IS & P requirements are derived from NIST special publications and federal information processing standards. The FAA Office of Information Security and Privacy (AIS) defines and maintains the agency enterprise information security and privacy policy. Because the NAS is classified as critical infrastructure, NAS systems must comply with additional ISS requirements as defined by Air Traffic Organization Policies. These ATO policies can be found on the FAA's Website under policy and guidance and are designated with the letters "JO".

To receive a successful in-service decision, all FAA investment programs must undergo a security authorization that assesses outputs and products against mandatory security requirements. The security authorization process is defined in FAA Order 1370.121 FAA Information Security and Privacy Program & Policy. The Security Authorization Handbook details the process for compliance with ISS requirements during solution implementation and in-service management. Investment programs must consult the Information Security Guidance for System Acquisitions (ISGSA) at each planning phase of the AMS lifecycle to ensure information security requirements and related information are included in acquisition artifacts, and to ensure the investment program is on track for a successful security authorization.

### **Physical, Facility and Personnel Security Policy**



The FAA must conform with national policy related to physical security of the aviation infrastructure including leased and owned facilities, the security of all information associated with operation of the FAA and aircraft operations, and personnel security. The FAA is also obligated to protect proprietary information to which it has access. Physical security is directly applicable to aviation industry operations and activities, and to supporting infrastructure such as communications, sensors, and information processing. FAA Order 1600.69C, Facility Security Management Program, establishes both policy and guidance for physical security.

FAA Order 1600.1, Personnel Security Program, establishes both policy and guidance for FAA personnel security. In addition, detailed guidance to implement personnel ~~and physical~~ security with respect to contractors is in FAA Order 1600.72, Contractor and Industrial Security Program.

### **Classified National Security Information (CNSI) and Sensitive Unclassified Information (SUI) Policy**

In order to meet the spirit of Executive Order 13526 and 32 CFR Part 2001 to protect classified national security information from unauthorized disclosure, systems containing or processing classified data are managed by the FAA Office of Security and Hazardous Materials Safety in accordance with FAA Order 1600.2F, Safeguarding Classified National Security Information. FAA Order 1600.75 Protecting Sensitive Unclassified Information (SUI) is in effect at [https://employees.faa.gov/tools\\_resources/orders\\_notices/index.cfm](https://employees.faa.gov/tools_resources/orders_notices/index.cfm) (FAA only).

The Privacy Act of 1974 and the E-Government Act of 2002 (Public Law 107-347) mandate protection of an individual's right to privacy and the prevention of unauthorized dissemination of personal information. FAA Order 1370.121 Appendices 19-26 establishes the policy and guidance for handling Personally Identifiable Information (PII). The FAA Privacy Office will handle all privacy issues.

### **4.12 National Airspace System Safety Management System Revised 1/2012**

When new capital investments are determined to have an effect on the safety of the National Airspace System, safety management must be conducted and documented throughout the lifecycle of a product or service in accordance with the FAA Safety Management System (SMS). The safety management system requires use of safety risk management to identify safety risks to the National Airspace System and to conduct product development at a rigor commensurate with the severity of the resultant hazard should that product experience failure. For software-intense systems, the establishment of a development assurance program in accordance with RTCA Document (DO) 278A, Software Integrity Assurance Considerations for Communication, Navigation, Surveillance and Air Traffic Management Systems, RTCA, Inc., is one acceptable means to demonstrate that a software product was developed at the appropriate level or rigor.

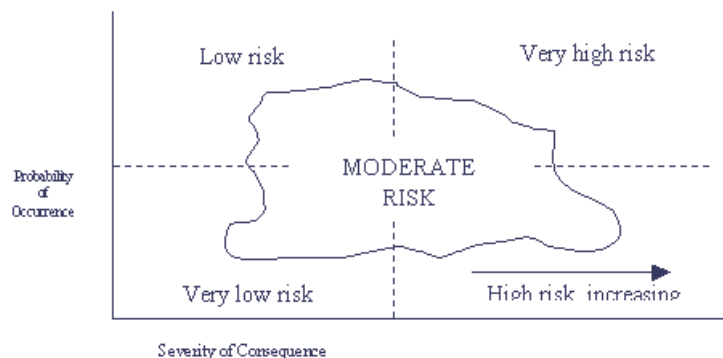
Critical safety issues identified during service analysis are further addressed in: (1) an operational safety assessment; (2) a system safety assessment of alternative solutions to mission need reported in

the business case; and (3) when service organizations provide program-specific safety risk management planning in the implementation strategy and planning document.

Each service organization involved in acquisition management must institute a system safety program that includes at a minimum: hazard identification, hazard classification (severity of consequences and likelihood of occurrence), measures to mitigate hazards or reduce risk to an acceptable level, verification that mitigation measures are incorporated into product design and implementation, and assessment of residual risk. Status of system safety must be presented at all decision points and investment reviews. Detailed guidelines for safety management are found in FAST, FAA SMS manual, SRMGSA, and RTCA DO-278A.

#### 4.13 Risk Management **Revised 11/2009**

Risk management is applied throughout the lifecycle management process to identify and mitigate risks associated with achieving FAA goals and objectives. Each line of business must institute risk management processes that: (1) identify and assess risk areas; (2) develop and execute risk mitigation or elimination strategies; (3) track and evaluate mitigation efforts; and (4) continue mitigation activity until risk is eliminated or its consequences reduced to acceptable levels.



**Figure 4.13-1 Risk Characterization**

Risk management applies to all levels of FAA activity, from small projects to large programs. It applies to such risk areas as cost, schedule, technical, system safety, all security disciplines, human factors, operability, producibility, supportability, benefits, management, funding, and stakeholder satisfaction (e.g., Congressional and aviation community priorities; union concerns). The following examples illustrate key elements of risk management:

- ❑ **Service-level risk management.** Risk management during service analysis identifies and characterizes risks to the FAA's ability to execute its legislated responsibilities and satisfy customer demands for service. Typically, these risks arise from changes in the operational environment and shortfalls in operational capability.
- ❑ **Investment analysis risk management.** Risk management during investment analysis must ensure primary risks associated with alternative solutions to mission need are



identified and evaluated fully. Sufficient time and money must be included in the acquisition program baseline of a solution selected for implementation to mitigate risk and achieve program success.

- **Program risk management.** Service organizations must apply risk management throughout the lifecycle of their products and services. The focus is on early detection and reduction of risk to avoid the greatly increased cost of dealing with the consequences of risk later in the lifecycle. Risk management planning and risk-mitigation actions are documented in the OMB Major IT Business Case and the implementation strategy and planning document. Appropriate risk management requirements and activities are also included in any prime contract for products or services. Risk management continues throughout in-service management, with the assessment and adjustment of mitigation efforts to reduce the consequences of risk to an acceptable level.
- **Security Risk Management.** Vulnerabilities and risks within FAA programs must be reduced to acceptable levels for all identified threats that could result in quantifiable injury to personnel, loss or destruction of critical assets, or disruption of FAA information systems, including mission-critical NAS operational systems and mission support and administrative systems. Offices sponsoring or executing programs must implement and maintain lifecycle security risk management for each investment program. Lifecycle security risk management must be an integral part of program concept, planning, engineering design, and implementation, and must be maintained and modified throughout the lifecycle, as required. The methodology for quantifying and measuring asset criticality, along with identifying levels of vulnerability and risk must meet or exceed the lifecycle risk management process guidance in FAST.
- **Human factors risk management.** Human factors risk management must ensure effective human / system interaction and performance. Human issues such as usability, operational suitability, personnel and training costs, and user performance must be evaluated during concept and requirements definition and investment analysis as FAA needs are defined and alternative solutions are evaluated. During solution implementation, human factors must be fully integrated into planning and execution of the overall program to foster safe, effective human / product performance and ensure user acceptance of the final product.

#### **4.14 Data Standardization and Management Revised 7/2008**

The FAA applies data standards to facilitate data sharing across systems, programs, government agencies, and industry. Data standardization improves the transportability of data, facilitates cost-effective development and re-engineering, and improves the quality, utility, and integrity of FAA information products and resources. The FAA data management program consists of data registration, data standardization, data certification, and lifecycle data management. Policy is in FAA Order 1375.1, FAA Information and Data Management. Guidelines and tools are in FAST.

#### **4.15 Post Implementation Review and Operational Analysis Revised 11/2009**

##### **4.15.1 Post-Implementation Review Revised 1/2013**

The post implementation review is typically a one-time review to determine the following:

- ☐ Are actual costs, performance, and benefits achieving baseline expectations and if not, why not?
- ☐ Is the asset enabling the agency to provide the intended service or do we need to make changes?
- ☐ Are there any systemic issues that need to be fixed before widespread deployment?
- ☐ Are there process or implementation issues we need to strengthen or improve?

The scope and content of the post-implementation review depends on the acquisition category to which the investment program is assigned. The PIR may include the examination of risks, requirements, customer feedback, and cost/schedule performance. The output is a comparison of actual program costs, schedule, performance, and benefits as specified in the business case and acquisition program baseline or execution plan, and actual results as deployed. PIRs may also be conducted on families of related programs intended to achieve composite service outcomes, as directed by the Joint Resources Council or Director of the performing organization.

The PIR is typically conducted 6 to 24 months after an asset first goes into operational service or as determined by the Joint Resources Council for families of related programs. The Director of the performing organization funds the review, determines the factors and sub-factors that comprise the review based on acquisition category, staffs the review team, plans the review, and executes PIR processes. The Director of the performing organization develops a plan of action and milestones to address findings of the review. The Director of the performing organization reports PIR exceptions, which cannot be managed by Directorate resources, to the Joint Resources Council, vice-president or equivalent, and/or key stakeholder organizations, as appropriate.

The PIR Quality Officer ensures the review is planned and conducted in an unbiased manner and consistent with agency standards. The PIR Quality Officer participates in PIR processes and maintains agency records of PIR strategies, plans, reports, exception reports, and plans of action and milestones. Go to [Post Implementation Review Guidance](#) to find out how to conduct a PIR and report results.

#### **4.15.2 Operational Analysis Revised 11/2009**

Operational analysis is the process by which FAA evaluates the ability of in-service assets to continue to provide the service for which they were procured. It answers the following questions:

- ☐ Are actual operating costs comparable to estimates in the business case analysis report?
- ☐ Is the asset operating with a sustainable design?
- ☐ Can the asset continue to meet the business needs and performance goals of the agency?
- ☐ Is the asset continuing to meet stakeholder needs?

Operational analysis consists of gathering and analyzing reliability, maintainability, and availability data (using the National Airspace System Performance Analysis System); managing supportability information to determine whether an operational asset can continue to provide the expected service for its intended life, monitoring cost data to ensure actual costs are in line with planned costs; and

managing asset viability against stakeholder needs. Results are fed into the FAA's planning and investment analysis processes by the Directorate, when warranted, as a basis for determining whether an asset may need to be modernized, replaced, or removed from service. Operational analysis begins when an asset first goes operational and continues until it is removed from service. Operational analysis data is also used in the evaluation of asset readiness status. Operational analysis is the responsibility of the Directorate of the performing/service organization. Go to [Operational Analysis Guidance](#) to find out how to conduct operational analysis and report results.

#### **4.16 Earned Value Management Revised 7/2016**

Organizations responsible for FAA capital investment programs that involve development must comply with federal regulations as required by OMB Circular A-11 and other relevant OMB Memoranda regarding earned value management (EVM) as it applies to both government and contractor development efforts regardless of contract type. The FAA uses EVM to manage development activities by providing timely, accurate, and integrated cost, schedule, and technical performance information.

EVM requirements are documented in the EVM Determination for each program by the EVM Focal Point prior to a Joint Resources Council (JRC) Investment Analysis Readiness Decision (IARD), Initial Investment Decision (IID), Final Investment Decision (FID) or Baseline Change Decision (BCD). However, the JRC may designate any program for the implementation of EVM at the program level or to any type of development contract based on an assessment of cost, schedule, and technical risk of each effort.

##### **4.16.1 Program EVM Requirements Revised 7/2016**

All FAA programs identified as major programs for reporting to OMB must establish a program management and control system using the principles of an EVMS in Electronic Industries Alliance (EIA)-748. EVM data is extracted from the management and control system and reported to DOT for submission to OMB on a monthly basis. The program EVM system must be consistent with the program management and control strategy in the JRC approved implementation strategy and planning document. The program must create the necessary program management information, including the Program level Performance Measurement Baseline (PMB) and supporting documentation for its program integrated baseline review (IBR). The program will facilitate the conduct of the IBR which will be overseen by an FAA team of subject matter experts formed and led by the EVM Focal Point as part of the oversight role.

The EVM Focal Point conducts program level surveillance on all major programs.

##### **4.16.2 Contractor EVM Requirements Revised 7/2016**

Implementation of EVM on development contract efforts is based on an assessment of cost, schedule, and technical performance risk of each contract. Implementation must be consistent with the program and contract management strategy in the implementation strategy and planning document.

Contractors are required to apply earned value management to development contracts over \$50 million and use a certified/validated EVM system (EVMS) for reporting. For development contracts between \$20 and \$50 million, the contractor management control system must comply with the EIA-748 guidelines as tailored by the program manager, contracting officer, and EVM Focal Point but a certification/validation of the contractor EVM system is not required.

The JRC may designate the application of earned value management to any development contract based on an assessment of cost, schedule, and technical risk of each contract. The contractor must provide an Integrated Program Management Report (IPMR) and participate in government led integrated baseline reviews.

The EVM Focal Point conducts contractor EVMS surveillance.

#### **4.16.3 Contractor Management Control System Certification Revised 2/2015**

The contracting officer assisted by the EVM Focal Point validates the contractor management control system as meeting contract management control requirements. The EVM Focal Point assesses contractor implementation of its management control system and monitors application to ensure compliance. Contractors not in compliance with the EVM requirements of a contract are subject to payment withholding in accordance with AMS clause 1.13-7 “Earned Value Management System – Withholding of Payment”. The EVM Focal Point determines whether a contractor requires an EVM system certification review or whether an existing certification is acceptable. The EVM Focal Point establishes agreements with other government agencies to recognize contractor EVM certifications and surveillance reports.

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